

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 THEODORE A. CASE, SALLY YOUNG,
5 HOWARD HOLLANDER, PATRICK BRADY
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 3
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 9, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND
20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.
AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBERG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
8
9

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1 THE COURT: Okay. This was the subject of
2 this hearing right this minute has to do with the proffered
3 testimony of Sherry Cooper. And the objections there to
4 filed by, offered by the defendants which I did receive later
5 in the day, through email.

6 Sherry Cooper was apparently a stewardess on TWA,
7 on international flights, but also a lawyer, apparently.

8 MR. KATZ: That's correct, your Honor.

9 THE COURT: Had gone to law school and even opened
10 an office of some kind.

11 MR. KATZ: Yes, sir.

12 THE COURT: It is not completely clear that, the
13 sequence of events, but she was both 20 years a stewardess,
14 and a lawyer.

15 When, as a result of the previous bankruptcy of
16 TWA, the union's were allowed representation on the board,
17 the union representing the flight attendants got
18 representation, and she I think in 1997 on Ward as a union
19 representative, on the TWA board. And eventually IMA became
20 the union, it wasn't initially, but become the, at some point
21 in 97, 98, become the union, which is the machinists union,
22 become the union for the flight attendance as well. I think
23 it was the IAM.

24 Now, the purpose of this testimony appears to be a
25 couple of things. Number one, the purpose of the testimony

1 appears to be to try to prove that that that TWA could have
2 survived as a stand alone company. It takes two levels. The
3 first is that it could survive and then ALPA should have
4 taken a tougher stand because if it could have survived it
5 wouldn't have been such a bad thing if American walked away
6 from the deal. That is the first thing.

7 The second thing it is trying to prove is that
8 American thought this was a jewel, by sticking this trophy
9 acquisition testimony. That is the second thing, American
10 thought this was a jewel again, for the same inference to be
11 drawn, they could have walked away from the deal or that they
12 wouldn't walk away from the deal if the union had, if ALPA
13 had taken a tougher position.

14 The third purpose of this seems to be to vilify the
15 president of TWA. I mean the whole series of testimony about
16 how he used the money from Boeing to buy a plane, from air
17 bus, as if somehow the money was earmarked when it came from
18 Boeing, don't use this sum, the money goes into a pot and
19 they made a decision, it seemed like a financial decision, on
20 the airplanes, she puts it in the sense they makes a
21 reference somebody buys something for somebody else's
22 girlfriend. The idea is to vilify the head of TWA, which
23 talked about firing him and how they were going to fire him.
24 To my knowledge he never was fired.

25 MR. KATZ: No, he wasn't.

1 THE COURT: When the acquisition took place, he no
2 longer had a job.

3 MR. KATZ: He stayed on for a while and then --

4 THE COURT: In any case, he was not fired. They
5 were thinking of firing I am. You have another purpose, you
6 have a lot of testimony, pages of it, about when they were
7 interviewing, well, it wasn't really individuals, an entity,
8 that was going to come in, through an individual who worked
9 for that entity.

10 MR. KATZ: J Alex, a restructuring firm in New York
11 City.

12 THE COURT: They were going to come in and a woman,
13 Ms. White, was going to, was going to be the co executive.
14 But very cleverly done by Ms. Rodriguez, I might add. Did
15 they have access to a financial information, trying to create
16 the inference that, well, they wouldn't have agreed to come
17 in if they thought it wasn't a stand alone company.

18 And then there is later testimony that you hire any
19 accountants to evaluate the testimony, evaluate the
20 financials and they said yes. She said yes, but then we have
21 no -- again, you are trying to draw the inference that they
22 agreed that it would be a stand alone company, we have no
23 idea what they said or what they did or rendered reports. I
24 am troubled by all of it.

25 I am troubled by some of the parts that that

1 weren't objected to. I find the whole testimony is full of
2 conjecture, the part about trophies. Who in American said
3 that? Was it done, I think, a person said, although I have
4 no way of knowing, an equal inference is that it was a joke,
5 and what they were really doing is mocking TWA's inflated
6 sense of its own self worth. And they were using it
7 mockingly.

8 Did one person use it? Did everybody use it? I
9 can't tell if she heard it directly from American people or
10 whether she heard it from other people who told her that is
11 what they were doing. It has nothing to do with her
12 testimony, but she keeps throwing that in very cleverly.

13 This was not, I don't know there, why, you if you
14 want to have her testimony come by tape. It should have been
15 done by a proper de bene esse, where you question him, they,
16 you do direct, they come in and cross. This was purportedly
17 a discovery deposition but it was an odd one because she is
18 clearly sympathetic to the pilots, to the union. She is a
19 union officer. She was head of her union. Her testimony is
20 totally sympathetic. It seems to me, I mean her
21 unavailability, she may technically be unavailable because
22 she is outside the subpoena scope, under 100 miles for
23 subpoenas.

24 But it is pretty clear that the decision not to
25 bring her to court is a tactical one, not one that she is a

1 unwilling to testify. I mean this thing cries for cross
2 examination. You can't cross examine her obviously if she is
3 not here.

4 Also, the question of whether TWA could have
5 survived the stand alone entity at that point clearly
6 requires expert testimony. You know, from an accountant,
7 somebody, who viewed all, had expertise in that area, and in
8 the airline industry particularly, reviewed all the finances.
9 Here she says we were going to get so many millions of
10 dollars from the union in concessions. First of all,
11 although they were negotiating to some degree, everything
12 would have had to have gone to the membership. And it didn't
13 go, nothing to my knowledge, went to the membership.

14 MR. KATZ: They were still negotiating on it.

15 THE COURT: What?

16 MR. KATZ: They were still negotiating on that.

17 THE COURT: Doesn't make any difference. Even if
18 they reached it, they had to go to the union, she said that,
19 it had to go to the union for ratification. Then we talk
20 about there had to be investment bankers coming in. Telling
21 me that George Soros showed interest in it, or that G E
22 Capital or other people interest. Yeah, so did Carl Icahn.
23 And who knows what kind of interest, what terms, what
24 conditions, they would have had. I mean it is speculation as
25 to whether, what they would have put in or not.

1 The bottom line is, I don't want to sit here and
2 argue for the next two hours over it. I am not going to eat
3 into the jury's time. Don't put this on today. At 2:15 we
4 will have a hearing. I will give everybody a chance. I
5 wanted to say what I wanted to say. I wanted you to know
6 where I am coming from.

7 Very troublesome very troublesome she is not here.
8 It is hard to believe that she wouldn't come. It has the
9 smell of a tactical decision rather than a true
10 unavailability.

11 MR. PRESS: Judge. Miss Rodriguez had the contact
12 with Ms. Cooper. I think if she was here.

13 MS. RODRIGUEZ: I am here.

14 MR. PRESS: Can you address the unavailability
15 issue?

16 THE COURT: You have one minute. I am going to
17 deal with that this afternoon.

18 MS. RODRIGUEZ: I just know that she was.

19 THE COURT: She is a friend.

20 MR. PRESS: No, she is not.

21 MS. RODRIGUEZ: She was not particularly, there are
22 reasons that she is not particularly --

23 THE COURT: You think this testimony is not
24 friendly testimony.

25 MS. RODRIGUEZ: She is not a friend of the pilots,

1 your Honor. There shall issues -- she certainly is an
2 advocate for our position. There are issues that --

3 THE COURT: You better believe she is an advocate
4 for your position.

5 MS. RODRIGUEZ: There are issues that make her not
6 available for us to bring her into court that are not
7 tactical issues to bar her from coming in to court and not
8 being subjected to cross examine.

9 THE COURT: Why wasn't it done as a de bene esse.
10 We do that all the time in this Court. We have doctors that
11 don't want to show up because just because they are doctors.
12 We take a de bene esse. Direct is on port.

13 MR. JACOBSON: Your Honor, she was cross examined at
14 the deposition. Federal Rules only provide for one type of
15 deposition. She was deposed. They cross examined.

16 THE COURT: You make a valid point. I actually
17 submitted a proposal to the rules committee to distinguish
18 twin de bene esse depositions and discovery depositions, they
19 are different animals, have different considerations. I
20 wrote a whole long report which was taken up by the poobahs,
21 but since most of them don't know anything about trying
22 cases, they turned it /OUPB down.

23 But I don't want to eat into the jury's time with
24 argument. A six-week trial, she can go on the next day or
25 the day after if I allow it.

1 MR. JACOBSON: Your Honor, it was possibly a one-
2 hour deposition. We may actually then finish a little
3 earlier than two o'clock today.

4 THE COURT: No, no. You got to have witnesses.
5 Folks, you told me this is going to be a six to eight week
6 trial. You don't parse it down to try to get them in. You
7 keep extra witnesses here. I am telling you right now, you
8 are not going to railroad me into eating into the jury's time
9 now, and to give you argument. I want to give you argument.
10 I want to give you argument on all these things. But I can't
11 do it now because I would be eating into the jury's time. We
12 are going to do it at 2:15, 2:20 this afternoon. And you
13 can put this on the next day. But for the future, I never
14 want to hear that you have run out of witnesses. You have a
15 list of, if somebody has to stay an extra day, then they have
16 to stay an extra day.

17 I am not going to eat into the jury time with legal
18 argument. You better believe that.

19 MR. JACOBSON: Your Honor, we understand. We had a
20 set of objections they made to the pretrial, and these are
21 new objections we addressed the objections they made in the
22 pretrial. We removed huge chunks of testimony --

23 THE COURT: We will argue all of that. That may be
24 a valid point. I don't know. We will argue it not on the
25 jury time. We will argue it, I will give you, I do have some

1 motion I think this afternoon that may take a short time. I
2 will be here all afternoon, as long as you need. I will give
3 you a chance to argue it.

4 THE COURT: Bring the jury in.

5 (Jury enters the courtroom)

6 THE COURT: Good morning, everybody. Please be
7 seated. -+

8 Mr. Case, will you please take the stand.

9 A. Yes, sir, your Honor.

10 THEODORE CASE, resumes.

11 REDIRECT EXAMINATION

12 BY MR. PRESS:

13 THE COURT: Redirect, please.

14 MR. PRESS: Thank you.

15 Q. Mr. Case, I want to follow up on a few of the points
16 that Mr. Fram talked to you about. Starting with the Bond
17 bill, the legislative effort that you had?

18 A. Yes, sir.

19 Q. Mr. Fram characterized the bill as special legislation.

20 A. Yes, sir.

21 Q. Who was that designed to protect, whose interests,
22 special interest he called it, special interest legislation?

23 A. The special interest was to protect the TWA pilots, the
24 ALPA TWA pilots.

25 Q. In your opinion, is there something wrong with that?

1 A. No, sir, not at all.

2 Q. You were characterized as a rookie lobbyist, rookie was
3 the phrase Mr. Fram used?

4 A. Yes, sir, ways a rookie.

5 Q. What significance did that play in the actions you took
6 with your union?

7 A. That is why I asked for their help, because I had no
8 experience and they were getting some traction with the
9 senators, just with our grass roots efforts. We actually
10 once again got the bill passed in the Senate without any help
11 whatsoever.

12 Q. Now, I want to talk about the April 2 MEC meeting where
13 the scope waiver occurred?

14 A. Yes, sir.

15 Q. And there was a lot of testimony about Roland Wilder?

16 A. Yes, sir.

17 Q. Mr. Fram asked you if Mr. Wilder changed his opinion in
18 that meeting?

19 A. Yes, sir.

20 Q. Remind the jury how long that meeting was?

21 A. That meeting lasted approximately, I think a little over
22 eight and a half hours.

23 Q. At what point in the proceeding did Mr. Wilder change
24 his opinion?

25 A. It was very late in the day, as Mr. Wilder was picking

1 up his bag to leave. Actually, if I am absolutely certain
2 about it, Mr. Wilder left the meeting a little bit early.
3 And as he was picking up his bags to leave, what he said was,
4 I guess any contract is better than no contract. And one
5 thing, caveat that he did add that I didn't yesterday, he
6 said, if you are going to waive, don't do it today. Wait
7 until I am standing on the courthouse steps.

8 Q. Mr. Fram asked you if Mr. Wilder was distraught. You
9 agreed that Mr. Wilder was distraught?

10 A. Yes, I did.

11 Q. Can you expand upon that?

12 A. He looked, Mr. Wilder is a very polite gentleman, and he
13 looked extremely disappointed, to the point of disgusted as
14 he picked up his bags and was departing.

15 Q. Mr. Fram talked that there were six other lawyers in the
16 room besides Mr. Wilder?

17 A. Yes, sir.

18 Q. I think that was the number?

19 A. He said eight. There were six.

20 Q. Of all the lawyers in the room who was the one lawyer
21 who had any experience in negotiating a seniority integration
22 with another airline?

23 A. To the best of my knowledge, only Roland Wilder, our
24 merger counsel.

25 Q. To the best of your -- who among the seven lawyers in

1 the room who was the only one that was negotiating for you,
2 seniority integration?

3 A. Roland Wilder.

4 MR. PRESS: That is all I have.

5 THE COURT: Recross. But limited to the scope of
6 direct.

7 MR. FRAM: No recross, your Honor. Thank you.

8 THE COURT: Okay. Thank you.

9 THE WITNESS: Thank you, your Honor.

10 (Witness excused)

11 THE COURT: Call your next witness.

12 MR. PRESS: Our next witness is going to be by
13 video deposition, Judge.

14 THE COURT: Okay. Tell me who it is.

15 MR. PRESS: I am sorry?

16 THE COURT: Tell me the name.

17 MR. PRESS: Jalmer. J A L M E R, Johnson.

18 THE COURT: Jalmer. Last name?

19 MR. PRESS: Johnson.

20 Can I give a brief instruction to the jury about
21 the videotapes..

22 THE COURT: Ladies and gentlemen, under our
23 practice under certain circumstances, evidence can be
24 presented from, by videotape. It is sworn testimony, meaning
25 the witness is taking the oath to tell the truth and you

1 should give it the same weight that you give testimony that
2 comes from the witness, live from the witness stand. Don't
3 give it any more weight, don't give it any less weight, just
4 because it is coming to you through the miracle of
5 electronics.

6 It is entitled to the same weight as live
7 testimony.

8 Okay.

9 MR. PRESS: I am sorry.

10 THE COURT: Introduce it, tell the jury.

11 MR. PRESS: We are going to play an excerpt or a
12 few excerpt from a deposition we took of Jalmer Johnson, the
13 general manager of ALPA. We videotaped his deposition in
14 Washington, DC, and we want to show that to you now.

15 (Videotape deposition of Jalmer Johnson is played
16 for the jury)

17 MR. PRESS: Judge, we would like to move the
18 exhibit of plaintiff's 113.

19 THE COURT: Is that a plaintiff's exhibit?

20 Any objection?

21 MR. FRAM: No objection.

22 THE COURT: Plaintiff's 113 is in evidence

23 (VIDEOTAPE Continues)

24 MR. PRESS: That is the end of the excerpts from
25 Mr. Johnson's deposition. Our next witness is another

1 deposition that we want to show, Stephen Tumblin.

2 THE COURT: Let me --

3 MR, KATZ: Your Honor, objection to that. They
4 haven't been addressed.

5 THE COURT: All right. Let me send the jury out.
6 We will take a look at that.

7 Ladies and gentlemen, we are going to take a short
8 break. I don't want to have, I don't want to be at sidebar
9 and have you sitting here. You might as well walk to the
10 jury room.

11 (Jury leaves the courtroom)

12 THE COURT: Okay. Is there something I can look
13 at? Where is it, in the final pretrial order?

14 MR. KATZ: No, your Honor. They modified the
15 portions of the Tumblin deposition that they intended to show
16 from the joint pretrial order.

17 THE COURT: So you had no objection to what was in
18 the joint pretrial.

19 MR. KATZ: Yes, we did have objection to that.
20 Those are in the pretrial order. This is a different
21 document --

22 THE COURT: You don't have a page number.

23 MS. RODRIGUEZ: Do you have a page number?

24 MR. JACOBSON: The changes were deletions the
25 sections.

1 MR. KATZ: There are an also additions we wanted
2 and we have been corresponding about this. They gave us
3 revised objections, revised designations, and that was
4 earlier this week. Like on Monday night. And yesterday we
5 gave them our response. I have offered to discuss them with
6 them and they haven't responded to what I gave them last
7 night.

8
9 MR. KATZ: Tumblin is a lawyer in Salt Lake City.
10 We had items we thought should be added to the deposition.
11 For instance, he described in his deposition what his
12 recollections were of the meeting of April 2 where he was
13 present, and they didn't have that as designated as part of
14 the clip. It makes sense to show one clip with his
15 recollection of the meeting, as well as what they wanted to
16 show.

17 They have one section of what he wanted to, of what
18 he remembered about discussions of the right to strike, which
19 was discussed in the April 2 meeting and they left out other
20 portions of his discussion of the right to strike. So we
21 wanted to have the complete recollections that he had of the
22 discussion of that issue at the meeting.

23 They have also added exhibits that they wanted to
24 include in this, and we have objections to many of those.

25 MR. JACOBSON: Your Honor, some of the statements

1 made are inaccurate.

2 THE COURT: Where? I can't find, where is all this
3 discussd in the final pretrial.

4 MS. RODRIGUEZ: In exhibit D, your Honor, exhibit D
5 to the joint final pretrial order.

6 THE COURT: Is page 56, Stephen Tumblin.

7 MR. JACOBSEN: Page 17 of 56, document 348-4 on the
8 docket. Exhibit D to the final pretrial order.

9 THE COURT: How can I rule on this? Do you have a
10 copy of what it is you propose to put in?

11 MR. KATZ: I suggest we do what we did with Ms.
12 Cooper, have the plaintiff's prepare a transcript of what
13 they propose to put in.

14 MS. ACCHIONE: I have a transcript.

15 MR. KATZ: I haven't seen it.

16 MS. ACCHIONE: I sent it via email.

17 MR. KATZ: I don't have that, Nicole.

18 THE COURT: Give it to me.

19 MR. KATZ: We after objection to page 33, lines --

20 THE COURT: Just a minute.

21 MR. KATZ: Page 33, lines 1 to 25, your Honor, this
22 is a discussion of an email, with a petition concerning
23 Michael Glanzer's proposed fee. Totally hearsay as to what
24 Glanzer expected to receive as a success fee, which is why
25 they want to put it in. They want to show Mr. Glanzer's

1 advise was colored by his anticipation of a large success
2 fee.

3 MR. JACOBSON: He denied he had a success fee. It
4 was a \$2.5 million document requested for in the ALPA
5 document that was prepared, we believe, by Mr. Tumblin,
6 certainly was sent by Mr. Tumblin, then why did he lie about
7 it?

8 MR. KATZ: Mr. Glanzer was deposed. He has been
9 subpoenaed for the trial. And he has been served. The fact
10 is if they want to prove something that was in Mr. Glanzer's
11 mind they can't do it via email from Mr. Tumblin to the
12 lawyer for TWA. That is my objection. It is totally hearsay
13 with respect to whatever Mr. Glanzer -- they didn't get Mr.
14 Glanzer to admit that his advice to the MEC was colored by
15 his anticipation of a large success fee. Now they want to go
16 through a round about back door to achieve the same thing.

17 THE COURT: Was there an agreement allegedly
18 between Glanzer and ALPA for that fee.

19 MR. KATZ: No. There was a written agreement he
20 was questioned about at his deposition. It did not mention
21 2.8 million dollars success fee and he denied that he was
22 anticipating that amount. It wasn't, that wasn't the amount
23 that was actually requested by the court and approved by the
24 court. He was paid \$200,000 pursuant to a petition --

25 THE COURT: These adviser fees in the plural, was

1 in 2.8 million just for Glanzer.

2 MR. JACOBSON: Yes.

3 THE COURT: He got 200,000.

4 MR. JACOBSON: Yes, he did not get the fee ALPA was
5 initially requesting for him.

6 MR. KATZ: He got 200,000. ALPA was reimbursed for
7 that through the bankruptcy court process as part of the
8 petition --

9 THE COURT: What is --

10 MR. KATZ: Next one is 39, 23 through 40, 10.

11 THE COURT: Through 40, 10.

12 MR. KATZ: That's correct. This is the email
13 reply. In any event, it is another email. It doesn't show
14 what Mr. Glanzer's expectation was.

15 THE COURT: What was the email?

16 MR. JACKSON: Jack it was an email from Mr. Tumblin
17 to others asking for the justification of the reasonableness
18 of 2.8 million dollars request on behalf of Mr. Glanzer.

19 MR. KATZ: It is reporting on what the lawyer for
20 TWA said to Mr. Tumblin.

21 MR. JACOBSON: It is Tumblin's request for --

22 THE COURT: In all this massive paper, if Glanzer
23 was entitled to a fee based on the American deal going
24 through, that is what a success fee would be, that would be
25 in writing somewhere. Is there any document that contains

1 that?

2 MR. KATZ: There is a written contract.

3 MR. JACOBSON: There is.

4 THE COURT: That says that.

5 MR. KATZ: No.

6 MR. PRESS: It has a formula for computing the
7 success sheet and was based upon the total value of the deal.

8 THE COURT: You use the word success fee. Success
9 fee means he wouldn't have gotten paid if the deal hadn't
10 gone through.

11 MR. PRESS: That is the way they deal.

12 THE COURT: Is that what it was?

13 MR. PRESS: Yes, it was a contingent fee.

14 THE COURT: That is being introduced.

15 MR. PRESS: No, we did not plan to introduce the
16 agreement.

17 MR. KATZ: They tried to prove 2.8 million dollars
18 from an email from the TWA lawyer to Steve Tumblin asking a
19 question. It doesn't prove anything about Glanzer's
20 expectation. They have Glanzer's contract. It doesn't say
21 2.8 million.

22 THE COURT: What is the next area of objection?

23 MR. KATZ: 40, 12 where the witness answers and
24 says I believe that is correct. That goes with the previous
25 one. The next one is 91, 4. Page 91, line 4. Through 92,

1 15.

2 MR. JACOBSON: First of all this objection was not
3 made in the pretrial. This is a new objection.

4 MR. KATZ: It was a new exhibit they are trying to
5 offer. MR. JACOBSON: Same testimony that was in the
6 pretrial and wasn't objected to.

7 MR. KATZ: The plaintiffs tried to add a new
8 exhibit and testimony, your Honor.

9 MR. JACOBSON: That is not a factual statement.

10 MR. KATZ: They are asking about a document with an
11 unknown author.

12 THE COURT: What is 232?

13 MR. KATZ: 232 is a draft by an unknown person at
14 Loboef.

15 MR. JACOBSON: It was a document from the man's law
16 firm of an outside line for the chairman, Bob Pastore to be
17 given at the bankruptcy hearing. Mr. Pastore will testify he
18 he wasn't shown it and part of the proposed testimony is you
19 are aware that if the Court rejects your -- accepts the 1113,
20 then you have a right to strike.

21 And there is going to be plenty of evidence that
22 Mr. Pastore and the others weren't aware of that and we think
23 that is part of the problem here is that the lawyers and
24 advisors are telling the Court and they are aware that that
25 there is at least a credible right to strike but they are not

1 sharing that with the MEC members. In fact, when asked that
2 at that April second meeting they say you most probably don't
3 have any right to strike. That is I think evidence of the
4 misinformation that is being given that helped corrupt this
5 hole process persuading the MEC members to vote to waive
6 scope.

7 MR. KATZ: Judge Irenas, this portion of the
8 deposition and this document and exhibit, the witness says he
9 doesn't know who drafted it. He does talk about the
10 discussion of the right to strike in other portions of his
11 deposition. And recites what he remembers of the discussion
12 about the right to strike at the April 2 meeting.

13 MR. JACOBSON: He does describe the document as one
14 produced by his law office. He recognizes the coding on the
15 left, that it comes from their file. He says he doesn't know
16 which lawyer prepared it but this was an outline intended for
17 Bob Pastore.

18 THE COURT: Who prepared it? What was it prepared
19 for?

20 MR. JACOBSON: It was prepared for the bankruptcy
21 hearing.

22 THE COURT: Yeah, but I mean, some law clerk could
23 have prepared, to start with, maybe it was something that was
24 going to be reconsidered. Just an undated, untimed, no
25 testimony backing it up.

1 MR. JACOBSON: It is dated.

2 THE COURT: Somebody made a suggestion that --

3 MR. JACOBSON: Jack it is dated April 5.

4 MR. KATZ: The witness said he didn't see it.

5 MR. JACOBSON: He said he didn't recall.

6 MR. KATZ: He didn't remember it, he didn't draft

7 it. It is not admissible testimony or exhibit.

8 THE COURT: What is the next objection.

9 MR. KATZ: Page 107, line 21, your Honor.

10 THE COURT: To what.

11 MR. KATZ: To 108, 9. Same kind of thing.

12 THE COURT: What is it. Through 108, 9.

13 MR. KATZ: It is an email to the witness.

14 MR. JACOBSON: Your Honor, this is not an objection

15 that was made in the pretrial. This is a new objection given

16 to us I think last night for the first time and the pretrial

17 order has, if the pretrial order has any teeth to it the

18 objection is supposed to be made then so everyone can deal

19 with it.

20 MR. KATZ: They made plenty of changes to the joint

21 pretrial order.

22 MR. JACOBSON: We are not making new objections to

23 things that have been on there for a long time.

24 THE COURT: What is the document?

25 MR. JACOBSON: I am sorry, your Honor.

1 THE COURT: What is this document? I read this, it
2 doesn't tell me anything.

3 MR. JACOBSON: It is a document that is listing
4 points of changes in the proposed transition agreement from
5 the existing collective bargaining agreement.

6 MR. KATZ: This was sent to this witness. He
7 didn't create it.

8 THE COURT: Who is Barbara Flynn?

9 MR. KATZ: She is a secretary at the MEC offers.

10 THE COURT: At what office?

11 MR. KATZ: The MEC office in Saint Louis. We will,
12 ALPA will produce a witness who will talk about this
13 document, a witness who knows what it was and had something
14 to do with it. But Mr. Tumblin was not, either, he didn't
15 have anything to do with it other than receiving it.

16 THE COURT: What is the next one?

17 MR. KATZ: 112, 3 to 7. Total lack of foundation
18 for this witness to talk about the flight pay loss bank. He
19 wasn't involved in that: That goes with 112, 9 to line 12.

20 MR. JACOBSON: That goes with the prior document.
21 That is one of the points in the prior document. He is asked
22 you as the lawyer here for TWA MEC, do you know why, he said
23 I knew once, I don't remember.

24 MR. KATZ: He says I don't have any specific
25 recollection.

1 THE COURT: What is next?

2 MR. KATZ: 122, 18, to 123, 10.

3 THE COURT: You basically all the stuff you didn't
4 object to at the pretrial you decided to start objecting to.

5 MR. JACOBSON: Yes.

6 THE COURT: 122, 18, to what?

7 MR. KATZ: 123, 10. We object to all these
8 emails. We did object to them.

9 THE COURT: What is it about this --

10 MR. KATZ: This is about the fee request and the
11 flight pay loss bank.

12 THE COURT: Fee request from Mr. Glanzer?

13 MR. KATZ: It is an email from another person to
14 Tumblin.

15 MR. JACOBSON: From Mr. Holtzman to Tumblin. How
16 do we explain to the Saint Louis MEC why we are applying for
17 2.1 million dollars for Glanzer if we are not applying for
18 them to get the rough value of the \$9,000 flight bank. He
19 suggests an answer how to mollify the pilots by saying the
20 flight lost pay is estimated.

21 MR. KATZ: They are trying to put in a big number
22 to show Mr. Glanzer's conflict of interest because of a large
23 fee.

24 MR. JACOBSON: It goes to show Mr. Holtzman is the
25 ALPA employed attorney and it goes to show that ALPA's

1 concern at this point in the bankruptcy of getting money back
2 is to get money for advisors and not for the MEC who were
3 creditors and had given up approximately one million dollars
4 value of the 9,000 hours. ALPA is going to apply for the
5 investment bankers fee but are for the 9,000 hours.

6 THE COURT: A creditor is different.

7 MR. KATZ: We are going to have a witness, you got
8 more --

9 THE COURT: You got more?

10 MR. KATZ: Just a couple more. 125, 15, to 20.

11 THE COURT: So far you haven't missed one. There
12 is one another another. After.

13 MR. KATZ: Part of the same entry. It it is just a
14 little later in the back and forth.

15 THE COURT: This.

16 THE COURT: He says he doesn't know.

17 MR. JACOBSON: He doesn't know whether he played it
18 or not.

19 MR. KATZ: Last one is page 143, 19.

20 THE COURT: Page what.

21 MR. KATZ: 143, 19, to 144, 6: It is total hearsay
22 speculation. There is no foundation for any of this.

23 THE COURT: To 144 1 4, 6?

24 MR. KATZ: That's correct.

25 MR. JACOBSON: These were not objected to in the

1 pretrial, your Honor. I think it is pretty significant that
2 one of the advisors says yes, they were relying on us,
3 advisors.

4 MR. KATZ: Total speculation for this witness to be
5 talking about that.

6 MR. JACOBSON: I think as an ordinary lay
7 observation and lay opinion that this guy who is advising
8 them is saying that yes, the people I am advising appears to
9 be relying on my advice, they don't appear to be experts.

10 MR. KATZ: How would this witness into?

11 MR. JACOBSON: Standard lay opinion.

12 MR. KATZ: Judge Irenas, we also have four entries
13 that we counter designated that should have been included, if
14 we are going to show a video of this witness it seems to me
15 there ought to be one video where the information is given to
16 the jury as to what he testified. They have shown part of
17 his testimony about the discussion of the right to strike,
18 and left out other portions of his testimony where he goes
19 into greater detail about the same discussion at the April
20 2nd meeting.

21 MR. JACOBSON: I don't believe it is the same
22 discussion. These are not completeness type designations and
23 certainly it is not unusual for a deposition to, when one
24 party place a part of the a deposition or uses part of a
25 deposition under the Federal Rules the other side has the

1 right to use any other part of that deposition in their case.
2 I don't think we are required to put on their case in our
3 case, your Honor.

4 MR. KATZ: It is certainly, these are certainly
5 proper completeness designations.

6 THE COURT: Completeness is not really the standard
7 for offering this. It is only if it is misleading, not if it
8 is incomplete.

9 MR. KATZ: That is exactly our point, it would be
10 misleading without the sections of the deposition that also
11 cover the same issue.

12 MR. JACOBSON: In addition, I would note the last
13 two of these additional designations they have were not
14 mentioned in the pretrial order, and the first two were
15 mentioned as supplements to sections that we have removed
16 from our portion. So they were supplementing portions that
17 we aren't using any more. They certainly can use it in their
18 part of the case, but we have removed the part that they were
19 supposed to be supplementing.

20 THE COURT: Is that true?

21 MR. KATZ: No, your Honor. It is not.

22 THE COURT: It is what?

23 MR. KATZ: 130, line 13, talking about the right to
24 strike. And what the witness remembered about discussions
25 concerning the right to strike. That is still part of the

1 tape that they want to show.

2 THE COURT: Where in the pretrial order are the
3 designations and the counter designations.

4 MS. RODRIGUEZ: In exhibit D.

5 THE COURT: Do I have that? Do you have it? Does
6 somebody have it.

7 MR. JACOBSON: We have a hard copy of it, your
8 Honor.

9 THE COURT: Can I have a hard copy of it?

10 THE COURT: Was a motion for two million eight all
11 actually filed in the bankruptcy court?

12 MR. PRESS: Yes.

13 THE COURT: You, it is referred to here as a draft
14 motion.

15 MR. PRESS: I don't know.

16 MR. KATZ: It referred did a draft motion. There
17 was an actual motion.

18 MR. PRESS: Judge, I am not so clear on that. I
19 don't want to mislead you. I don't know.

20 THE COURT: Was it actually filed in the bankruptcy
21 court.

22 MR. PRESS: There was a motion filed. I am not
23 going to represent how much it was for. I don't know.

24 MR. KATZ: The motion to reimburse ALPA for
25 expenses. Is that what you are asking about?

1 THE COURT: Here this is a draft motion, which are
2 going to ask for Glanzer for two million eight for financial
3 advisory services. They describe it as a draft motion.

4 MR. KATZ: That is what it was. The motion asked
5 for \$965,000, the Court -- TWA consented to that. The
6 bankruptcy Judge approved that. That amount was paid, and
7 was used to reimburse ALPA for the expenses it had initially
8 paid for in terms of services by Tumblin, Glanzer, Richard
9 Seltzer and others. With the amount was \$965,000, the final
10 application.

11 MR. JACOBSON: Ultimately, your Honor, the question
12 isn't necessarily what was ultimately asked for by the court
13 but what the expectations were, how that might have infected
14 this process and through the drafts we see, exceeded the
15 expectation, at least at that early stage it appears to be
16 two point eight million dollars for Mr. Glanzer. That is
17 different than as you mentioned yesterday, Mr. Wilder has an
18 expectation of fees. Getting an hourly fee is different than
19 getting two point eight million. It is a different kind of
20 expectation.

21 THE COURT: Is Glanzer going to testify?

22 MR. KATZ: Yes, he has been subpoenaed and served
23 and is on our witness list. They asked him about that at the
24 deposition. They don't like the answers they got, so they
25 are trying to prove Glanzer's expectations through an email

1 from -- with an email between Tumblin and a lawyer for TWA.

2 I think that is improper.

3 We should be able to add four short clips we
4 notified the other side about, in fairness, that discuss Mr.
5 Tumblin's recollections of discussions about the right to
6 strike and other advise that was given at the MEC meeting on
7 April 2. They include some of that, but not other portions
8 that they don't like.

9 THE COURT: You can ask other witnesses to explain
10 this. The jury is not going to have any idea who Barbara
11 Flynn is. How are they going to know who they are?

12 MR. JACOBSON: Not all the evidence comes in at
13 once.

14 THE COURT: The question is, you understand that.

15 MR. JACOBSON: Yes.

16 THE COURT: What are the plaintiffs trying to prove
17 about the email from Barbara Flynn?

18 MR. PRESS: Your Honor, it is a list.

19 THE COURT: 13 things.

20 MR. PRESS: Yes. 13 things waived in the
21 transition agreement that were not required by the asset
22 purchase agreement. These were extra concessions ALPA made
23 for no consideration that were, that wasn't even required to
24 close the sale.

25 THE COURT: This was not in the April 2 waiver.

1 This was in the transition agreement.

2 MR. PRESS: Correct:

3 MR. KATZ: This witness had no knowledge of that.

4 MR. PRESS: We just want to authenticate the
5 document.

6 MR. KATZ: We will have a live witness who is
7 familiar with the document.

8 MR. JACOBSON: That is not our case. We will
9 authenticate it in our case. You.

10 THE COURT: Barbara Flynn didn't prepare the
11 document.

12 MR. JACOBSON: No, she is the center of
13 communications at the TWA MEC.

14 MR. PRESS: She was Mr. Holtzman's secretary,
15 Judge.

16 MR. KATZ: This is not an ALPA document. ALPA
17 didn't create this document, Judge.

18 MR. JACOBSON: The TWA MEC is part of ALPA.

19 THE COURT: Whose, who created this document?

20 MR. PRESS: I don't know that. Mr. Tumblin
21 authenticated it, that yes, this is a list of things that we
22 gave up.

23 THE COURT: Doesn't he say he has no recollection?

24 MR. PRESS: If Mr. Katz says that there is going to
25 been a witness that testifies about it --

1 THE COURT: He says he has no recollection.

2 MR. PRESS: I am suggesting perhaps we can
3 stipulate to its admissibility and we don't have to play
4 that, Judge.

5 If Mr. Katz is going to use it through 1 of his
6 witnesses it seems to me it should be a joint exhibit and we
7 don't need to play that excerpt from the dep.

8 THE COURT: If he is going to to use it -- all
9 right.

10 MR. KATZ: Let me talk to co-counsel about that.

11 MR. JACOBSON: Your Honor, while they are talking
12 there are a number of other depositions down the road. There
13 were a fair number of objections made. We have withdrawn,
14 had taken the laboring oar and withdrawn substantial portions
15 of the especially deposition designations in response to
16 objection.

17 The new objections seem to be springing up like
18 mushrooms out of the rain. We need to get a process so we
19 are not taking up jury out of here.

20 THE COURT: Between the two of you the jury would
21 be in the jury room forever.

22 MR. JACOBSON: We can't do it that way. We have to
23 not waste their time. We suggest that we have a session with
24 the Court after one of these court days when the Court is
25 available so we can go through it. The Roland Wilder

1 deposition alone is a three-hour deposition. There were many
2 objections with withdrew portions of it. We were told that
3 the defendants would be removing their objections, except as
4 to hearsay, they are removing foundation and, foundation and
5 relevancy once. And so we thought we would be dealing with a
6 much reduced set of objections, but we don't seem to be. And
7 we want to be able to get these resolved in a way that is not
8 interfering with jury time.

9 MR. KATZ: Your Honor, we got this three-hour tape
10 of Wilder's designations as provided by the plaintiffs just
11 yesterday.

12 MR. JACOBSON: We didn't add anything, your Honor.
13 We only removed things. So the objections that they had
14 before, we responded to most of them by removing the portion
15 they found offensive.

16 MR. KATZ: With regard to Wilder, there are a
17 number of counter designations that ALPA needs to put in,
18 based on what is in, what plaintiff's want to show. We are
19 happy to have a session with the Court to discuss these
20 matters.

21 But I think that this afternoon should be limited
22 to Cooper and perhaps Tumblin.

23 MR. JACOBSON: I think we have just used a lot of
24 time with Tumblin. I think the Judge is going to tell us to
25 play. We can put on Mr. Altman while the videographer makes

1 the changes.

2 MR. FRAM: Counsel asked if we would stipulate to
3 P-237. I don't think we have a problem with that. We can
4 make that a joint exhibit. We will just agree it can go into
5 evidence. That doesn't mean that certain witnesses can
6 testify about it, but as to the document we do not contest
7 that, we do not contest its admissibility.

8 THE COURT: The word success is not used anywhere
9 in the tape, is it? I didn't see it used, in what you
10 offered. He got a fee for advisory services.

11 MR. JACOBSON: I don't recall it being used. I can
12 double check here.

13 Your Honor, I don't see the phrase used in the
14 excerpts we have designated. Sometimes people like to be
15 overly delicate in talking about contingency fees.

16 THE COURT: Nothing here tells me it is a success
17 fee as opposed to just an advisory fee.

18 MR. JACOBSON: Right.

19 THE COURT: I mean if Glanzer was ALPA's adviser,
20 right?

21 MR. KATZ: No, he he was retained by the MEC in
22 April, two --

23 THE COURT: That is ALPA's, the union side.

24 MR. KATZ: Yes.

25 THE COURT: He wasn't adviser on the transaction

1 itself. I see a success fee, if you are a financial adviser
2 to one of the parties to a transaction --

3 MR. JACOBSON: Part of his job as the ALPA financial
4 adviser was to seek out other merger partners and to help
5 bring potential deals to the table. The union pays --

6 THE COURT: You have to look at the contract in the
7 context of success fees.

8 MR. JACOBSON: As you can see from Ms. Cooper's
9 deposition the union representatives were highly involved in
10 attempting to restructure and change the company moving
11 forward. Ms. Cooper's union was single largest shareholder
12 in TWA, Inc., and like all good owners, took an active role
13 in their business.

14 MR. KATZ: I believe Ms. Cooper.

15 THE COURT: 237 is the one you are talking about?

16 MR. KATZ: Yes.

17 (Pause)

18 THE COURT: Man, this is thin.

19 All right. Here is what I am going to do for this
20 one.

21 I am going to overrule the objection to 33, 1, to
22 33, 25. I am going to overrule the objection as to 39, 23,
23 to 40, 10. I am going to sustain the objection to 91, 4, to
24 92, 15. That, by the way, is the draft examination from an
25 unspecified source. I am not going to let you use take a

1 draft from a lawyer, we don't know who he is, the purpose he
2 wrote it for, whether it was used -- I mean, I see no basis
3 for its admission.

4 I am overruling the objection from 107, 21, to 108,
5 9. And likewise, with the same one, from 112, 3, to 112, 12.
6 Overruling the objection.

7 I am sustaining the objection to 122, 18, 123, 10.
8 That has apparently trying to juxtapose the 2.5 million which
9 in fact was never paid with the flight bank. What probative
10 value that has I can't see. And it opens up legal issues as
11 to the status, as to whether they appear in bankruptcy court
12 with the same status. Maybe there is a valid reason why one
13 is not covered and the other is. And I, and likewise,
14 sustain the objection to 125, 15, to 125, 20, which is the
15 same issue.

16 I am going to overrule the objection to 143, 19, to
17 144, 6.

18 MR. KATZ: Your Honor, counter designations --

19 THE COURT: I am not finished. What did you say.

20 MR. KATZ: I said I am sorry. I didn't mean to
21 interrupt you.

22 THE COURT: I haven't finished yet on the question
23 of additions.

24 Because the testimony is so thin and we are getting
25 into areas that the witness really doesn't know anything

1 about, or knows very little about, other than a particular
2 communication to a document and because I think the potential
3 for confusing the jury is great on this testimony, we are
4 really far afield in the issue of -- well, you say Glanzer
5 had self interest. He doesn't have a self interest to get
6 paid for his services. Whether he has a success fee based
7 specifically on something happening or he doesn't get it if
8 it doesn't happen, nothing in this testimony says that.

9 I am going to allow the counter designations.

10 MR. KATZ: Thank you, your Honor.

11 THE COURT: It gives a fuller picture of what went
12 on with this witness. I think it eliminates some of the
13 confusion. So that is my ruling.

14 MR. KATZ: Thank you.

15 THE COURT: You need time to put it together.

16 MR. JACOBSON: As a technical matter, they have the
17 same system. Our guy is working on eliminating the portions
18 you indicated were sustained. If it is possible, could their
19 people have their clips cued up and they play theirs right
20 after ours?

21 THE COURT: I overruled the objections.

22 MR. KATZ: He is going through and eliminating the
23 ones you sustained. If they could put together their clips,
24 they can play ours and we could play ours.

25 MR. FRAM: We don't have the technical people here

1 to do that.

2 MR. JACOBSON: I thought you did.

3 THE COURT: I can read it.

4 MR. KATZ: Four segments that we have given him in
5 an email last night. I am not sure the Court has. I have
6 them here on my computer.

7 THE COURT: I have the ones that I read. I don't
8 want any that I haven't read.

9 MR. KATZ: I am not sure.

10 THE COURT: I have read, I am allowing page 81,
11 line 1, through 85, line 25: Actually, line 24.

12 Page 86, line 1 through 88, line 24: Page 130,
13 line one through 135, line 21. The last one, I think it is
14 the last one, is page 141, line 3, through 143, line 18:

15 MR. JACOBSON: I will give those to the technician
16 now.

17 THE COURT: Did you get those?

18 MR. KATZ: Yes, sir.

19 THE COURT: I had them right, didn't I?

20 MR. KATZ: Yes, thank you.

21 THE COURT: Do you know how long it is going to
22 take: So I can go offer the bench for a few minutes.

23 THE COURT: All right. I will see you in 15
24 minutes. Tell me when they are done.

25 (Recess)

1 (The jury enters the courtroom.)

2 THE COURT: Mr. Press, you may proceed.

3 MR. PRESS: Ladies and gentlemen, our next witness
4 is again going to the via video. This is Steve Tumblin,
5 whose deposition was taken in Salt Lake City. And so that is
6 it.

7 THE COURT: Again, ladies and gentlemen, the same
8 instruction concerning this deposition as the previous one.
9 It has the same force and effect as if he were here in court.

10 (Videotape of Steve Tumblin played)

11 MR. PRESS: Your Honor, we would move for the
12 admission of exhibit P 223, Judge.

13 THE COURT: Any objection?

14 MR. FRAM: No objection, your Honor.

15 THE COURT: Okay. P 223 is in evidence.

16 (Videotape continues)

17 MR. PRESS: We move for the admission of exhibit P
18 225.

19 MR. KATZ: No objection.

20 THE COURT: Okay. P 225 in evidence.

21 (Videotape continues)

22 MR. PRESS: Judge, we move the admission of exhibit
23 P 226.

24 MR. KATZ: No objection.

25 THE COURT: P 226 in evidence.

1 (Videotape continues)

2 (Off-the-record discussion).

3 MR. FRAM: Pardon us for just a moment, your Honor.

4 THE COURT: Sure.

5 (Off-the-record discussion).

6 MR. PRESS: Judge, we are going to move the
7 admission of plaintiff's exhibit 227, plaintiff's exhibit
8 228, plaintiff's exhibit 229, and joint exhibit 136 as a
9 group.

10 THE COURT: 136?.

11 MR. PRESS: Yes.

12 THE COURT: Is there any objection?

13 MR. FRAM: No objection.

14 THE COURT: P-227, P-228, P-229 and J 136 are in
15 evidence.

16 MR. KATZ: Objection, your Honor. That is one of
17 the entries that was to be excluded.

18 THE COURT: What line and page is that?

19 MR. KATZ: 125, 15 to 20.

20 THE COURT: 125. Yes, I took out 15 to 20.

21 MR. JACOBSON: Sorry, your Honor.

22 THE COURT: Well, it is not very harmful. Let's
23 just keep going.

24 (Videotape continues) (video concludes.

25 THE COURT: Who is next.

1 MR. PRESS: Alan Altman who my partner is going to
2 get right now. He is outside the courtroom. Alan Altman.

3 A L A N A L T M A N. Sworn.

4 DIRECT EXAMINATION.

5 BY MR. PRESS:.

6 MR. PRESS:

7 Q. Can you please introduce yourself to the jury and tell
8 them where you live?

9 A. Good morning. My name is Alan Altman. I live in Las
10 Vegas, in evidence.

11 Q. What is your profession?

12 A. Airline pilot.

13 Q. Where are you currently working?

14 A. I currently work for Jet Blue Airways based in Long
15 Beach, California, suburb of Los Angeles.

16 Q. How long have you worked for Jet Blue?

17 A. My sixth year now.

18 Q. What kind of plane do you fly there?

19 A. Air bus 832, 153-passenger aircraft.

20 Q. How long have you been an airline pilot?

21 A. Going on 20 years. Longer than that.

22 Q. When did you first get a pilots license?

23 A. I started flying in college. In Arizona State in 1981.

24 Q. And?

25 A. I got my pilots license after I graduated college, doing

1 it for fun initially, when I was in school and I needed to
2 concentrate on my studies. I waited until I got out of ASU.

3 Q. Arizona State?

4 A. Arizone State.

5 Q. What years were you there?

6 A. 1980 to 1984.

7 Q. Did you graduate with a degree?

8 A. Yes.

9 Q. What was that?

10 A. Bachelor of science in justice studies.

11 Q. But you, after you graduated what did you do for a
12 living then?

13 A. After I graduated my family has an insurance business up
14 in New York where I am originally from and they wanted me to
15 give it a try. I had been wanting to fly, but out of respect
16 I said sure I will give it a shot and I went to work for my
17 father in the insurance business in New York.

18 Q. How long did you last in the insurance business?

19 A. Six months. I started to fly at the same time while I
20 was working at the airport in white planes, New York, I was
21 trying to get my license as well working for my family.

22 Q. When did you first fly for a commercial carrier? When
23 did you first earn a paycheck to fly. How about that?

24 A. I was a flight instructor. I moved back to Arizona.

25 The weather in New York was not conducive to trying to learn

1 to fly quickly. Especially early on. You really have to
2 have good weather to do it. So I went back to Arizona where
3 the weather is 350 days out of the year you can fly. It
4 would be quicker, it would also be cheaper to do it that way
5 also. I started my instruction job in 1989.

6 Q. How long did you, were you --

7 THE COURT: You got the rating, you got a flight
8 instructors rating.

9 A. Yes, I got a multi-engine instructor also.

10 Q. I didn't hear that?

11 A. It was, flight instructor ratings along with my multi
12 engine ratings, two separate ratings also.

13 Q. How long were you a flight instructor?

14 A. I instructed for three years at a flight school in
15 Scottsdale, Arizona. Part of the time I was working for
16 their regular student pilot program that they had people off
17 the street. We also had a program, at the time they still
18 do, at foreign airlines would come over to the United States
19 with their students, again, because the weather is so good,
20 it is a lot cheaper. I was working for Sabina Airlines which
21 at the time was the Belgian airline, training their students?
22 Scottsdale, initial.

23 Q. When was it that you first flew passengers for your
24 living?

25 A. I went and I got a job in 1992 working for a small

1 company based out of the Grand canyon flying air tours called
2 Air Grand Canyon.

3 Q. What kind of plane did you fly?

4 A. It was called a Cessna 207, a 7 to 9 passenger, single
5 engine airline. We would fly tours over the Grand Canyon
6 starting at the airport at the south rim, usually did a loop
7 around the Canyon. I did that for about nine to ten months.

8 Q. Then what did you do?

9 A. Got a job, I was offered a position at a company called
10 Air Nevada which was based in Las Vegas. It was a step up.
11 It was the multi engine aircraft which when you want to get
12 an airline job you need to get multi engine time and it is
13 hard to get. It was a great opportunity.

14 I knew some people over there, offered me the job
15 and I moved to Las Vegas to fly. Similar idea, it was air
16 tours and there were some small scheduled operations to
17 certain cities in the desert southwest.

18 Q. How long did you fly for that airline, Air Nevada?

19 A. It was under a year.

20 Q. What was your next flying job?

21 A. My next flying job I had been applying to commuter
22 airlines to take the next step, and I was offered a position
23 at Trans States, Trans World Express in Saint Louis,
24 Missouri.

25 Q. What kind of flying did you do there?

1 A. I was hired on to the ATR. It is a European make
2 aircraft. It is a big airplane for a commuter, it was a twin
3 engine turbo prop, they would hold either 42 or 72 people.
4 It was pressurized, it had air conditioning, which is very
5 nice.

6 Q. How long did you fly for Trans States?

7 A. Trans States. Three years.

8 Q. What year are we up to now, Mr. Altman?

9 A. This would be now 1997.

10 Q. When did you first start applying to one of the major
11 airlines?

12 A. Right away.

13 Q. It is the goal of every pilot to fly for a major
14 airline. Even if you don't have the qualifications they are
15 looking for, you would apply to basically get your name
16 known. Think keep seeing resumes updated every six months,
17 it goes in your file, six inches thick and that was the idea
18 behind that.

19 Q. Which major airline did you go to work for first?

20 A. Trans World Airline.

21 Q. What year was that?

22 A. January, 1997.

23 Q. And why did you pick TWA?

24 A. I had been flying in St. Louis which was which was TWA's
25 headquarters for trans world express. I ended up meeting a

1 lot of people, became friends with a lot of people at TWA.

2 And I was really interested and I really wanted to work. I

3 actually targeted TWA as my airline of choice, where I wanted

4 to work.

5 Q. And and you did, January, 97?

6 A. Yes, sir.

7 Q. How long did you stay working for TWA?

8 A. I stayed with TWA until January of 2003, when I was

9 furloughed.

10 Q. You were actually furloughed from this new company owned

11 by American called TWA LLC?

12 A. That's correct.

13 Q. All right. Were you ever a member of ALPA?

14 A. Yes, I was.

15 Q. When did you first become a member of the union, that

16 union?

17 A. At Trans States. That was the first union carrier that

18 I worked for.

19 Q. ALPA rented the pilots at Trans States airlines?

20 A. Yes, they did.

21 Q. Do you remember what year you joined the union?

22 A. I don't remember what year I joined. It would probably

23 be /SAOUPB after I arrived on the property, but I don't

24 remember exactly when.

25 Q. When you work to TWA did you join the union again?

1 A. Yes, I did.

2 Q. Mr. Altman, while you were an ALPA represented pilot did
3 you do any union work?

4 A. Yes, I did.

5 Q. Can you take us through that work history from the first
6 volunteer position to, well, I will interrupt you I am sure,
7 start with the first one?

8 A. Initially, when I was at Trans State, Trans World
9 Express I did some volunteer work on scheduling committees.
10 When I got to TWA, I was new hire. A new hire and I flew
11 with the person who was the chairman of the grievance
12 committee. He said you would be perfect. I would like you
13 to come on board.

14 Q. What kind of work does the grievance committee do?

15 A. The grievance committee is a committee that we have a
16 contract, collective bargaining agreement. And if somebody
17 has a dispute or they feel that they have been wronged by
18 scheduling, the company in some way, they would go to the
19 grievance committee and ask for help. We were the
20 intermediary so that the pilot doesn't go to the company on
21 their own. We are their representatives, we would go in
22 there and hopefully try to resolve the situation as quickly
23 and as easily as possible.

24 Q. Just give us a flavor for what kind of disputes arise
25 that the grievance committee would deal with?

1 A. You would finish a trip, you think you are going home,
2 and they try to tell you that we need you to fly another day.
3 They are trying to extend you into a day off. Let's say your
4 contract says no. That was not allowed. So the pilot would
5 then call after, the scheduling, they would call the
6 grievance committee. Somebody would pick up the phone and
7 hopefully right then and there say you can't do this,
8 according to the section every the contract, he has to have
9 24 hours off. He has to go home.

10 If that didn't resolve the situation you would tell
11 the person to fly the trip. Don't refuse if you don't want
12 to get into any other type of trouble but then there were
13 further procedures that would follow where a grievance would
14 be filed and you would go through a process to correct the
15 wrong.

16 Q. How long were you on the TWA grievance committee?

17 A. I did that for about a year.

18 Q. What was your next ALPA position?

19 A. The next position was the negotiating committee. I was
20 nominated for, the negotiating committee in 1999.

21 Q. How were you nominated, and by who?

22 A. I had been working in the ALPA office, the MEC office in
23 St. Louis, got to know everybody, and the chairman of the
24 committee had openings, and I expressed an interest and I was
25 selected.

1 Q. And that was in 1999?

2 A. 1999.

3 Q. There was some testimony yesterday that -- well, you
4 just tell us. Was there already a collective bargaining
5 agreement in place?

6 A. Yes, there was.

7 Q. That was the year before you got on the negotiating
8 committee?

9 A. That's correct. 1998.

10 Q. So if there is already a contract, why do you need a
11 negotiating committee?

12 A. If -- it is a standing committee. There may be issues
13 that arise after you have your contract that either one side
14 or the other, or both sides, agree doesn't work. You can go
15 in and try to fix issues. Anything that could come up that
16 would be related to either your contract, or to business,
17 that pertains to the pilots, you need a negotiating
18 committee. So it was a standing committee. Many times there
19 wasn't much work to be done.

20 Q. Was that the case when you were on the committee, at
21 least up until 2001?

22 A. Initially, there was not a lot going on. The first real
23 business that I was involved with was a possible code chair
24 agreement.

25 Q. You said code chair?

1 A. Yeah.

2 A. Yes, it was with America West Airlines at the time.

3 What it does, TWA doesn't fly from Phoenix to San Francisco.

4 But what you do when you enter into this business agreement

5 is that you book, meaning TWA will book their code on that

6 America West flight so the America West flight, it is marked,

7 it will say America West flight one, San Francisco. TWA,

8 Transport Airline, flight 1001. In the reservation system a

9 person who goes to book a reservation or goes on line to book

10 a flight, TWA's website, they see that. It is a way to

11 expand your network without having to buy 3,000 airplanes.

12 It is a marketing agreement.

13 Q. You were involved in negotiate thanking with America

14 West?

15 A. Yes, I was.

16 Q. When you got appointed to the negotiating committee, Mr.

17 Altman, did you receive any training from ALPA?

18 A. No, I did not.

19 Q. Other than this America West code share negotiate, what

20 was the most significant project your committee was faced

21 with while you were on the negotiating committee?

22 A. The most significant project we were faced with was the

23 asset purchase agreement between TWA and American Airlines in

24 2001.

25 Q. Well, was that something you negotiated?

1 A. No. We were dealing with the after effects of the
2 airlines entering into this agreement. Now you are trying to
3 merge two airlines, two different contracts, two companies.
4 There was a lot to be done.

5 Q. Okay. Did you -- well, at some point you were elected
6 to the TWA Master Executive Council or MEC. Right?

7 A. That's correct.

8 Q. When was that?

9 A. I was elected in late 2000. I was living in Los Angeles
10 at the time and there was an opening for a first officer
11 representative in what we call Council 4 which was the Los
12 Angeles west coast base. So I ran for that position. And I
13 was elected. And it was to take effect in February 15, 2001.

14 Q. Okay. So you assumed responsibilities as a MEC member
15 in February, 2001?

16 A. That's correct.

17 Q. You had no experience on the MEC before that?

18 A. No, I did not.

19 Q. Now --

20 THE COURT: That was after the American TWA deal
21 had been signed, right.

22 A. That's correct.

23 Q. Six weeks later after you took your position, you were
24 involved in a decision to waive scope, right?

25 A. That's correct.

1 Q. Six weeks after you --

2 A. Yes.

3 Q. Explain for the jury just a little bit, what the
4 responsibilities of a MEC member were. Let me back up. Mr.
5 Case explained he was a none voting member in the winter of
6 2001. But you were a voting member.

7 A. That's correct. I was a voting member. One of six that
8 we had, that -- the role of the MEC is to vote the will of
9 your constituents. So I had a number of first officers in
10 Los Angeles that I was to vote their will, what did they want
11 in issues that would arise. So we would hold regular
12 meetings with our counsel. You try to do it once a month if
13 you could.

14 Email wasn't as prevalent then as it is now. We
15 did a lot of phone calls, if issues were up. You try to get
16 as many people as possible to respond. Then you would rate
17 your votes based on constituents. It should not have been
18 what my personal opinion was, if I am representing 120
19 pilots, I have to find out what they want me to do.

20 Q. That is what you understood your job was?

21 A. Yes, I did.

22 Q. Why did you run for that position?

23 A. I like to be involved. I believed in the union. I
24 believed in the process. I am not one that sits on the side
25 lines and just throw stones or watches or gripes. I want to

1 be involved and I believed in this.

2 Q. When you say you believed in it, what do you mean by
3 that?

4 A. I believed in the union. They had done a lot of good
5 throughout history in terms of airline safety, contracts. It
6 was a good job, and I credited a lot of that to the work of
7 the Air Line Pilots Association and the Union.

8 Q. Now, Mr. Altman, this deal with American to buy TWA,
9 when did you first find out about that?

10 A. It was early January, 2001, I believe it was the date
11 prior, it was announced, that would be January 8. It was
12 fairly late, it was a conference call from our Master
13 Executive Council Chairman, Bob Pastore, called everybody to
14 tell us this is what happened, this is what is going to be
15 announced tomorrow. We are giving you the heads up.

16 Q. What did you think about the deal when you first heard
17 about it?

18 A. Obviously I thought it was honestly I thought it was a
19 great deal. At the time American was growing, that it was a
20 chance to merge two companies, the slogan they used, two
21 great airlines, one great future. Who doesn't want to be
22 part of the largest airline in the world or in any business,
23 you want to be the biggest. And it was very exciting. I
24 thought this would be a great opportunity for everybody.

25 Q. Okay. Despite that opportunity, do you recognize there

1 would be some challenges with this transaction. Is that
2 right?

3 A. That's correct. There would be significant challenges.

4 Q. What did you consider the biggest challenge was going to
5 be?

6 A. The seniority integration or the integration of the two
7 pilot work groups into one.

8 Q. When did you become aware of the fact that the asset
9 purchase agreement had this condition that the TWA pilots had
10 to waive scope?

11 A. We were told that by Bob on the conference call.

12 THE COURT: Bob?

13 THE WITNESS: Bob Pastore.

14 A. Bob Pastore said this was in the asset purchase
15 agreement, didn't go into it much further until a couple of
16 days later, in a meeting in Saint Louis, that described yes,
17 the, described the asset purchase agreement in detail.

18 Q. When you found out about this condition of the deal,
19 what did you think about that?

20 A. I was surprised. It had never been done before. This
21 was something, and I had limited experience but I knew that
22 this had never been asked before. And it was actually quite
23 surprising. When you negotiate a contract, the first thing
24 that you negotiate are your job protections.

25 So when they asked us to waive what they call scope

1 and successorship provisions in your contract, that is your
2 job protection provision in case of mergers, buy-outs, what
3 they call fragmentation, they might split the company up, any
4 number of scenarios, that is your protection and we were
5 being asked to waive our protections going in to this deal.

6 Q. Okay. Did you remain on the negotiating committee and
7 the MEC throughout this process?

8 A. Yes, I did. I wore two hats during the process.

9 Q. Can you tell us on the negotiating -- well, what was the
10 first substantial thing that you did to face the challenges,
11 or to deal with the challenges faced by the TWA pilots, I
12 should say?

13 A. The first thing that we did, negotiating committee, we
14 had a meeting in January of 2001. It began on the 23rd of
15 January and lasted until the 25th. It was with the
16 negotiating committee. The merger committee that was
17 appointed at the time that would handle the actual
18 integration talks between the two carriers. And ALPA
19 advisors down in Herndon, Virginia.

20 Q. A three-day meeting at ALPA headquarters, January 23
21 through the 25?

22 A. That is correct.

23 Q. What was the, I don't know, the agenda for the meeting?

24 A. The agenda of the meeting and it was set up by our
25 contract administrator, our ALPA contract administrator in

1 our St. Louis office, Mr. David Holtzman and it was to be for
2 planning and strategizing because the deal had just been
3 announced. We needed to get together with our advisors,
4 people, the full merger committee and negotiating committee
5 and start drawing out a plan of action as to what we wanted
6 to do and how we wanted to proceed.

7 Q. All right. And who from ALPA, employees of ALPA,
8 attended your meetings there?

9 A. We had our contract administrator, Mr. David Holtzman,
10 clay Warner from ALPA legal and a gentleman named Bob Christy
11 who was the economic and financial analysis department at
12 ALPA National.

13 THE COURT: He was an employee of ALPA?

14 A. Yes, he was.

15 Q. And tell us how the meeting started?

16 A. We were down talking acknowledge ourselves, the
17 negotiating group, we were in a conference room, we were
18 talking, the merger committee was talking and the three ALPA
19 advisors, Mr. Holtzman, Mr. Warner, Mr. Christy, came in the
20 room and sat down in front of us, which I thought was a
21 little unusual.

22 Normally, when you are not adversarial, you are on
23 the same side, you kind of mix in together, sit and talk.
24 And it was a little, I was a little surprised by that.
25 Didn't say much initially before it started. I was talking

1 with our chairman of the negotiating committee, Mr. Ron Kiel.

2 And in Christy leaned over and made a comment to us.

3 Q. What did he say?

4 A. Surprised me. He said you know you are going to have to
5 waive your scope. And it was -- I stopped for a moment.

6 THE COURT: Who said this?

7 A. Mr. Christy.

8 THE COURT: Who is he again?

9 A. He was the economic and financial analysis.

10 THE COURT: He was from ALPA?

11 A. Yes.

12 Q. Out of the blue he says you know you are going to have
13 to waive scope?

14 A. Yes. It is not a formal presentation, he leaned over
15 and made that comment to us. Ron Kiel and I both turned
16 around, we looked at each other. We hadn't even started
17 talking strategy, and he just made this comment. I don't
18 know why he made the comments or what the intent was. It
19 just struck me as being very odd.

20 MR. FRAM: Pardon me. Can we get facts from the
21 witness and not impressions?

22 THE COURT: Yes. Let's get facts. Who said what
23 to whom instead of impress goes.

24 Q. You understand the judge's instructions?

25 A. Yes, I do.

1 Q. Mr. Altman, this was in the beginning of the meeting.

2 It was a three day meeting. Did can you tell us when you

3 left what was the overall --

4 THE COURT: Can we get the dates of the meeting?

5 MR. PRESS: January 23 through 25. Is that right?

6 THE WITNESS: That's right.

7 THE COURT: All day for those for those days.

8 THE WITNESS: Yes, it did.

9 Q. What was the strategy you had developed by the end?

10 A. The strategy was the merger committee would be dealing
11 with the Allied Pilots Association, their counterparts at
12 American Airlines, the pilots union on their merger committee
13 and on the negotiating committee we would just gather as much
14 information as we possibly could. Again, this was new. We
15 didn't have all the facts. We needed to do a fact-finding
16 mission to gather information.

17 Q. This notion of waiving scope, what was the strategy for
18 that, yeah, we will do that or what?

19 A. Oh, no, it was we are not going to do that.

20 Q. Was there any discussion at this stage, again, this is
21 January 23, of a 1113 motion in the bankruptcy court?

22 A. Yes. We did have Mr. Bill Wilder, who was one of our
23 merger attorneys, that we had hired, with his father, their
24 firm, Roland Wilder, and he gave us a brief discussion on
25 what the 1113 is, and whether he thought it would prevail or

1 not.

2 Q. And what was the opinion of that Mr. Wilder expressed to
3 you at that meeting?

4 A. The opinion expressed was that a 1113 motion would not
5 prevail.

6 Q. This was Bill Wilder, Roland's son?

7 A. Yes.

8 Q. He is a lawyer, though?

9 A. Yes, he is.

10 Q. You mentioned Mr. Holtzman, Warner and Christy were at
11 the meetings. Were any of those gentleman present for Mr.
12 Wilder's talk about the bankruptcy motion?

13 A. Yes.

14 Q. Who?

15 A. All three of them.

16 Q. Did any of them express anything along the line, Mr.
17 Wilder, you are wrong or disagree with anything he was
18 saying?

19 A. There were no disagreements.

20 THE COURT: Mr. Altman, when you talked about 1113,
21 you talked about what it was they were, was being rejected,
22 did he talk specifically about the scope rights?

23 A. Yes, he talked about how you have to negotiate and
24 bargain both sides and then the Court would make a
25 determination on the economic, if it is economically needed

1 for the process to continue. That was what the discussion
2 was about. He said I didn't see, he he didn't think the
3 Court would grant in this case.

4 Q. And again, that he was who?

5 A. Bill Wilder. Our merger attorney.

6 Q. Did Mr. Holtzman or Warner or Christy make any
7 statements to the effect that they agreed with Mr. Wilder's
8 opinion?

9 A. No. There was no agreement or disagreement at this
10 meeting. People were just listening.

11 Q. Now, at that point there hadn't been a 1113 motion
12 filed. That came later?

13 A. That came later.

14 Q. Why were you even talking about that?

15 A. It was one of the threats, I guess, coming, that if we
16 were told by TWA corporation that if you didn't do this, this
17 would be the next step that they would have to take and that
18 would be to file a 1113 motion.

19 Q. So you just planned it?

20 A. That is exactly what the meeting was for. What are the
21 options, what are we phased with. What could happen?

22 Q. Mr. Altman, as an ALPA member, a MEC member, were you
23 aware of any efforts before the American TWA transaction was
24 announced, so now we are in the year 2000, were you aware of
25 any efforts by ALPA to get the American pilots to rejoin

1 ALPA?

2 A. Yes, I was.

3 Q. Can you tell us what you understood at the time?

4 Q. Again, we are talking before the merger deal was
5 announced in January?

6 A. There were a number of airlines that had split off from
7 ALPA in the past. And for various reasons. And ALPA was
8 making a concentrated effort, rightfully so, I believe, to
9 bring it back into one union. The airlines in question were
10 Federal Express, Continental, and American. So I had known
11 that -- well, Federal Express and Continental had rejoined
12 ALPA, knew that. And we knew that, or I knew personally from
13 press reports and what I had read in ALPA magazine and other
14 publications that, you know, there is an effort, we would
15 like to get American back into the ALPA fold.

16 Q. Okay. Now, did that subject come come up at these
17 January, late January, meetings?

18 A. Yes, it did.

19 Q. Tell us how, the subject was raised?

20 A. The merger committee chairman for our side, Mr. Bud
21 Bensel, asked the question.

22 Q. Asked it of whom?

23 A. He asked it of the ALPA advisors, Mr. Holtzman, Mr.
24 Christy and Mr. Warner, and it was phrased, what are you
25 doing with American, and the American pilots.

1 Q. And was a response made?

2 A. Yes, there was a response from Mr. Christy who said we
3 are washing our hands of them, we are walking away.

4 Q. Why did that issue come up?

5 A. It was important --

6 THE COURT: Who raised the issue.

7 THE WITNESS: Mr. Bud Bensel, our merger committee.

8 THE COURT: How can he testify as to why Mr. Bensel
9 --

10 MR. PRESS: I withdraw the question.

11 Q. When you heard the question did you think, well, that is
12 a good question?

13 A. Yes, I did.

14 MR. FRAM: Objection, your Honor.

15 THE COURT: No, I will allow that.

16 Q. Why was it important to you to have an answer to that
17 question?

18 A. In my opinion, my mind, I wanted to make sure that the
19 union that was representing me against the American pilots,
20 our adversary, was not trying to do anything to bring them
21 back to ALPA during this time period.

22 Q. Why?

23 A. It is a conflict of interest.

24 Q. Can you put up exhibit P 113.

25 THE COURT: Is that in already.

1 MR. PRESS: Yes, it is.

2 Q. Mr. Altman, I want to hand you an exhibit -- you have it
3 right there. Exhibit 113 was admitted into evidence earlier
4 this morning. We will blow it up.

5 This is the letter dated January 25, 2001, right.

6 A. Yes.

7 Q. Do you recognize the flame at the bottom who sent this
8 letter?

9 A. I recognize the name, yes, I do.

10 Q. Mr. Johnson. This was, this letter was sent when you
11 were at ALPA headquarters, right?

12 A. That's correct.

13 Q. Where was Mr. Johnson's office?

14 A. ALPA headquarters, I would assume.

15 Q. And he is writing to, do you recognize the name he is
16 writing to, Captain John Darrah, president, Allied Pilots
17 Association?

18 A. Yes, I do.

19 Q. Tell the jury what this gentleman, his position was?

20 A. Captain Darrah was the equivalent of our Bob Pastore.
21 He was the chairman of their union.

22 Q. There being who?

23 A. APA, American pilots.

24 Q. Who represented?

25 A. The American pilots.

1 Q. Oh, I am sorry. How does he start the letter? Go ahead
2 and read the first sentence. Dear John?

3 A. Dear John --

4 MR. FRAM: Pardon me, your Honor. The letter is in
5 evidence.

6 THE COURT: The letter is in evidence. He can add
7 that he knew it was written, or it had some role in its
8 creation. Then I think he can testify to that.

9 MR. FRAM: There is no foundation even he knew
10 about it.

11 THE COURT: That is my point.

12 MR. PRESS: I am moving on.

13 Q. Mr. Altman, were you shown this letter when you were at
14 Herndon?

15 A. No, I wasn't.

16 Q. If you --

17 THE COURT: No, no. The question of what he would
18 have done were he shown is not a proper question.

19 MR. PRESS: All right.

20 Q. When did you first see this letter?

21 A. Last month, while preparing for this trial.

22 Q. And when you saw it --

23 THE COURT: No, no. His reaction when he saw it is
24 not evidence.

25 Q. So, leaving these meetings, the overall strategy again

1 was what?

2 A. Information gathering.

3 Q. All right.

4 THE COURT: We are talking, we are back to the
5 three day meeting.

6 A. That's correct. January 23 through 25.

7 Q. As a member of the negotiating committee were you
8 involved in any negotiations for the scope waiver? Was that
9 your committees job?

10 A. It was our commit -- our committee was discussing this,
11 the MEC members, the voting members are the ones that
12 actually vote order the scope waiver.

13 Q. When did the subject first come up for your negotiating
14 committee, the notion of a scope waiver?

15 A. We had a meeting late February, 2001. I believe it was
16 the 28 of February. We were down, I believe it was downtown
17 St. Louis at the TWA corporate headquarters. And we were
18 told by Terry Hayes who was the vice president of labor
19 relations of TWA and Mr. Bernie Plum who was a TWA bankruptcy
20 counsel, bankruptcy attorney, that we would have to waive our
21 scope, that that is one of the pre conditions of the asset
22 purchase agreement, and that they were going to put TWA into
23 what they called a LLC. A limited liability corporation, to
24 be known as TWA LLC.

25 Q. This is on February 28, you meet again with whom?

1 A. Mr. Terry Hayes and Bernie Plum.

2 Q. They were representatives of what?

3 A. They were TWA.

4 THE COURT: TWA, Inc..

5 THE WITNESS: TWA, Inc., that's correct.

6 Q. And they mentioned this LLC. Is that the first time you
7 ever heard of that?

8 A. Yes, it was.

9 Q. Did you ask any questions about that?

10 A. I didn't personally ask any questions. I mean we just,
11 that I can remember. It was just more of what is a LLC.
12 What is this? We didn't know.

13 THE COURT: You did know it was going to be owned
14 by American.

15 THE WITNESS: That's correct.

16 THE COURT: This wasn't going to be a TWA
17 subsidiary, you knew this was going to be an American
18 subsidiary.

19 A. That's correct. We didn't know how it was going to
20 work.

21 THE COURT: Had you read the contract, the actual
22 asset purchase agreement, before that meeting.

23 THE WITNESS: Yes, I had.

24 THE COURT: So you knew about the scope waiver that
25 was in the contract itself.

1 THE WITNESS: It was in the contract. No one had
2 told us that you are going to have to do this per the asset
3 a purchase agreement. We knew it was there.

4 Q. So the TWA management folks, they said you are going to
5 be what, employed by a new company, this LLC. Is that what
6 she said?

7 A. That's correct.

8 Q. That was the first time you have heard that?

9 A. First time we ever heard of it.

10 Q. So what happened after that? What did your committee
11 do?

12 A. We went back to --

13 THE COURT: Are you talking about the merger
14 committee.

15 MR. PRESS: Negotiating.

16 THE COURT: The negotiating committee.

17 MR. PRESS: Yes.

18 Q. This is confusing. There is the negotiating committee
19 that negotiates contractual issues, right?

20 A. Yes.

21 Q. And the merger committee negotiates seniority with the
22 American pilots?

23 A. That's correct.

24 Q. You are dealing with TWA and the merger committee is
25 dealing with American pilots?

1 A. That's correct.

2 Q. All right. What was the next thing, significant thing,
3 that the negotiating committee do?

4 A. We went back to our offices in Saint Louis, and we sat
5 down with our contract administrator, ALPA contract
6 administer, local, David Holtzman, and we came up with a
7 proposal that we sent over to TWA airlines, Inc., based on
8 what they had told us in the meeting about what they thought,
9 and it hadn't been put in stone yet, that this was going to
10 happen, but based on what we were told, we came up with an
11 offer.

12 Q. Okay. I think I have that.

13 MR. FRAM: What is the number, please?

14 MR. PRESS: Joint 168.

15 Q. I handed you J 168: What is this exhibit, Mr. Altman?

16 A. This is the letter that that we sent over, the offer, to
17 TWA.

18 THE COURT: Are you offering it in evidence?

19 MR. PRESS: Yes.

20 THE COURT: I assume because it is joint there is
21 no objection.

22 MR. FRAM: Correct, your Honor.

23 THE COURT: There being no objection, J 168 is in
24 evidence.

25 Q. The date of it is March 5, right?

1 A. That's correct. March 5, 2001.

2 Q. And if you go to the third page, who signed this letter?

3 A. The signature is captain Ronald Kiel, chairman of our
4 TWA negotiating committee.

5 Q. But this was a letter that you had participated in it?

6 A. We all did, yes. The whole committee.

7 Q. You certainly approved of it being submitted to TWA?

8 A. Yes.

9 THE COURT: Who was the scribe, somebody had to
10 write it, never mind who participated in it. Who wrote it?

11 A. That would have Mr. David Holtzman, our contract
12 administrator.

13 Q. From?

14 THE COURT: From ALPA.

15 THE WITNESS: From ALPA.

16 Q. Was Mr. Holtzman involved, he didn't just type it, he
17 was involved in coming up with the ideas expressed in the
18 letter?

19 A. Yes. Actually, we go to the first page.

20 Q. What are you going to refer us to?

21 A. Number one on the first page where it says a process
22 agreement. That was actually David Holtzman's idea.

23 Q. Let back up and get some context to that. You write,
24 ALPA proposes that it will waive the scope and successorship
25 provisions upon the execution by the appropriate parties of

1 the following agreements. And you list them. You say we
2 will waive if you do one, two, three, four, five and six
3 things. Right?

4 A. That's correct.

5 Q. And the first thing you said we will waive if you do
6 what?

7 A. A process agreement that would assure a fair and
8 equitable seniority integration which was our primary
9 concern, as to how you were going to integrate these
10 companies. And the end it says, the process agreement would
11 end in, there is no decision, mutual, among the parties in
12 arbitration. You let a third party, neutral, make the
13 decision.

14 Q. The phrase process agreement is in quotes. Why is that?

15 A. I don't remember.

16 Q. All right. But any way you said we will waive that
17 section of our contract or those sections if you give us a
18 process agreement and a, a process agreement assuring fair
19 seniority integration. Right?

20 A. That's correct. That is all we wanted.

21 Q. Number 2, another condition to your scope waiver was
22 what? And this is addressing TWA's statement up here a
23 week ago that there is going to be this limited liability
24 company?

25 A. That's correct. We had a contract, collective

1 bargaining agreement, with TWA. The TWA LLC would be a new
2 company. And you would need to have a contract going in to
3 the new company. We were told that usual contract with TWA
4 would not be valid so what we proposed here would be, what we
5 have in our contract now minus the provision we would waive
6 into the new TWA LLC collective bargaining agreement.

7 Q. You write this new collective bargaining agreement will
8 include all of the provisions of the current collective
9 bargaining agreement except for scope and successorship,
10 right?

11 A. That is correct.

12 Q. So we will waive if you give you a process agreement and
13 a collective bargaining agreement that mirrors our current
14 one?

15 A. That's correct.

16 Q. All right. What was the next thing, significant thing,
17 that happened, Mr. Altman, with respect to the issues
18 expressed in this letter?

19 A. At the bankruptcy court proceedings, you want to say it
20 was March 9, I was down at the hearing, and with David
21 Holtzman, we were handed a handwritten piece of paper from
22 Mr. Terry Hayes who was the vice president of labor, TWA,
23 with a different proposal for a process agreement. It was
24 just a one paragraph, handwritten note.

25

1 MR. PRESS: P-171.

2 THE COURT: P-171?

3 Q. I am going to hand you an exhibit?

4 Q. I handed you exhibit P-171, Mr. Altman. What is that?

5 A. This is the, I guess you could call it a response that
6 came from TWA to our March 5 letter that talked about a
7 process, their proposal for a process.

8 MR. PRESS: We move for the admission of 171,
9 Judge.

10 MR. FRAM: No objection, your Honor.

11 THE COURT: Okay. P-171 in evidence.

12 Q. The first page of that exhibit is an email that you
13 don't seem to be copied on, right?

14 A. That's correct.

15 Q. From Mr. Holtzman to who, Mr. Warner?

16 A. That's correct.

17 Q. But the attachment, the next page, what is that?

18 A. This is what, a typed up version of the handwritten
19 message that Mr. Terry Hayes had given to us.

20 Q. So this is, you had proposed we need a process agreement
21 that would end an arbitration if we can't agree on seniority?

22 A. That's correct.

23 Q. This is what you got back as a counter proposal on that
24 subject?

25 A. Yes.

1 Q. You got it on March 9. Is that right?

2 A. Yeah, I believe it was March 9.

3 Q. AA will use reasonable best efforts with its labor
4 regulation to, representing pilots to secure a fair and
5 equitable process for integration of seniority. We are going
6 to engage a facilitator to organize the meeting. When you
7 received this, Mr. Altman, did you understand what any of
8 this meant?

9 A. No, I did not understand what this was. I turned to
10 David and I asked what is this, and he said, I am not sure.
11 We need to look at this.

12 Q. All right. What was the next step or next significant
13 event in the negotiation, if you can recall?

14 A. We sent another proposal to TWA that was, basically a
15 response, to, it was what we had originally proposed in the
16 first letter. What we did this time was we, instead of doing
17 it in a letter format, it was more bullet point format, but
18 it was what we had asked for originally with a process
19 agreement, we contracted with the LEC, no changes.

20 MR. PRESS: D 359.

21 THE COURT: D 359.

22 Q. What is exhibit D 359?

23 A. This exhibit is our proposal, the negotiating committee
24 ALPA, back to TWA.

25 MR. PRESS: We move for the admission --

1 THE COURT: Can I ask a question?

2 MR. PRESS: Yes.

3 THE COURT: D 359, there is no letterhead on it,
4 just plane white paper. That is surprising.

5 MR. PRESS: That is the way it was produced to us
6 by the defendant, Judge.

7 THE COURT: So the defendant doesn't in any way
8 challenge this is a genuine ALPA response.

9 MR. FRAM: That's right.

10 THE COURT: Do you know why it was on plain white
11 paper rather than letterhead.

12 MR. FRAM: Most of the proposals went back and
13 forth, your Honor, are like that.

14 THE COURT: Okay.

15 MR. FRAM: The course of dealing, if you will.

16 THE COURT: Okay. You have no objection to it
17 being in evidence.

18 MR. FRAM: Correct.

19 THE COURT: D 359 in evidence.

20 Q. Mr. Altman, what is this document?

21 A. Again, this was our proposal, counter proposal, back to
22 TWA after we received the March 9 process.

23 JUROR NO. 12: Can you move that out of the way?

24 Q. Mr. Altman, this is a proposal that your committee
25 submitted to TWA on March 15. Is that right?

1 A. That is correct.

2 Q. And without looking at all the provisions, what is the
3 gist of what you are offering?

4 A. What we had originally offered, we wanted a process
5 agreement that would ensure fair and equitable integration
6 that would end in arbitration if the parties could not agree
7 mutually.

8 Q. On March 9 the week before you had been given this
9 reasonable best efforts language from TWA. So you were
10 rejecting that?

11 A. We were rejecting it. We hadn't had a, it hadn't come
12 back to us as to what the analysis was at that time. We just
13 countered, we want our process agreement. The process
14 agreement was, like I said, our ALPA contract administrator's
15 idea and he said stick to this.

16 Q. To address the judge's question, why doesn't it look
17 more formal?

18 A. There were a lot of proposals that would go back and
19 forth, and this is normally the format they were done in.
20 This is not unusual.

21 Q. Did you receive a response to your March 15 proposal?

22 A. Yes, we did.

23 Q. When was that?

24 A. March 17.

25 MR. PRESS: D 386, Mr. Fram.

1 THE COURT: The number?

2 MR. PRESS: D 386.

3 THE COURT: D?

4 MR. PRESS: D 386.

5 Q. What is that document, Mr. Altman?

6 A. This is a counter proposal from TWA from Terry Hayes who
7 was their vice president in labor relations and it was a
8 counter to what we had proposed just a couple days prior.

9 THE COURT: A counter from.

10 THE WITNESS: TWA.

11 THE COURT: Why was there a counter --

12 A. ALPA to TWA, top corner.

13 THE COURT: E so three 59 is not a proposal to
14 American, or American pilots, or it was a proposal to TWA.

15 A. Yeah, this was the negotiating committee --

16 THE COURT: I want to be clear, instinct tells you
17 the people you are negotiating with --

18 A. This was with the negotiating committee on our side, the
19 TWA pilots. We were negotiating the contract, the new
20 contract, and what we wanted going into the new company. So
21 that --

22 THE COURT: The new company was an American
23 company.

24 A. It was very interesting how it worked.

25 THE COURT: Not a TWA company.

1 A. You bring up an interesting point.

2 THE COURT: Thank you.

3 A. We had to deal with the TWA management people who then
4 had to go to American. They were really I guess you could
5 say the middle men. They would go to the counterparts,
6 whoever they were talking with at American, and American
7 would give them a response and then the TWA people would come
8 back to us. It is very confusing.

9 THE COURT: Yes. It seems to be. Yes. I agree.
10 So you were actually sending your proposals to, the hours and
11 that stuff, to TWA, and TWA presumably was forwarding it to
12 American.

13 THE WITNESS: That is what we thought.

14 THE COURT: Okay. By the way, 386, any objection?

15 MR. FRAM: No objection.

16 THE COURT: You want it in evidence.

17 MR. PRESS: Yes.

18 THE COURT: 386 in evidence.

19 Q. Mr. Altman, these negotiations we are talking about that
20 began February 28 saying you are going to need an agreement
21 with TWA LLC, this new company we are forming, right?

22 A. Yes.

23 Q. That is all this, that we talked about since then, all
24 led up ultimately to this document that was marked as exhibit
25 139 yesterday, the transition agreement, with TWA LLC,

1 correct?

2 A. That's correct.

3 THE COURT: But TWA LLC was not run by the TWA,
4 Inc., management.

5 MR. PRESS: That's right.

6 THE COURT: I mean the person would have to sign
7 off on it on some kind of interim labor agreement, would be
8 the American folks.

9 A. They had us dealing with the TWA people. If it was, it
10 was confusing to us and it was a delay and a lag in
11 information coming coming back and forth because of that.

12 Q. Did the people you were negotiating with over this
13 contract were TWA, Inc., employees?

14 A. That's correct.

15 Q. Not American employees?

16 A. That's correct, we never met with --

17 Q. Did they have any authority to agree on anything that
18 you proposed?

19 MR. FRAM: Objection.

20 THE COURT: No, I think.

21 MR. FRAM: No foundation that the witness would
22 know.

23 THE COURT: I think he would know.

24 Q. What did they tell you about their own authority?

25 A. They said they told us, they have to give this to

1 American. American has to be the ones to approve this.

2 Q. Were you given any access to anybody in American to
3 negotiate this contract?

4 A. No, we we dealt with the TWA, Inc., people.

5 Q. Did Mr. Holtzman make any --

6 THE COURT: What about the APA, in this timeframe,
7 like March, of 2001, were there any reaching out to the APA
8 people, the union for the American pilots, was there some
9 kind of negotiation going on there?

10 A. That was with our merger committee, they were actually
11 talking to the APA themselves about working proposals, trying
12 to do an integration, a seniority integration.

13 THE COURT: They were in a sense duplicating in
14 some sense your work.

15 THE WITNESS: They were working more on the actual
16 agreement. This was more if you were going to waive your
17 scope, which was your job protections and the new contract
18 going in on that would cover us into this new American-owned
19 subsidiary.

20 Q. Did people, the people negotiating with the American
21 pilots union were negotiating over what?

22 A. With the union.

23 Q. Your merger committee?

24 A. The merger committees were talking about how you would
25 merge the TWA pilot list of pilots and the American pilots

1 and how would you integrate that into some combined list.

2 Q. Those negotiations weren't part of your committees
3 negotiations over a contract with your employer?

4 A. No, this was a contract with the employer. A new
5 company.

6 THE COURT: The interim CBA with this new airline.

7 A. That's correct.

8 Q. Okay. Let's go back to TWA's counter proposal to you of
9 March 17. It was Exhibit 386. Do you have that?

10 A. Yes, I do.

11 Q. You had asked for a process agreement that would ensure
12 fair and equitable seniority integration culminating in
13 arbitration if necessary?

14 A. That's correct.

15 Q. How do they counter that?

16 A. They didn't put in here what we wanted.

17 Q. They were not agreeing to that?

18 A. They were not agreeing to that.

19 Q. Are you on page 3, Mr. Altman?

20 A. Yes, I am.

21 Q. This is, who prepared this, as far as you know? It says
22 agreement between TWA LLC and ALPA?

23 A. I honestly don't know who prepared this. I suspect it
24 would be the TWA people who we were dealing with.

25 Q. Is this the first time that, in your negotiations that

1 there was anything, a document exchange that had the word
2 agreement, that looked like a contract?

3 A. Yes, it is.

4 Q. The first time that you go through two more pages, the
5 first time you have anything prepared that had signature
6 lines on it, if it would have been agreed to?

7 A. That is correct.

8 Q. Now, in you go to the last page, March 17, 01,
9 memorandum of understanding for changes to the TWA ALPA
10 collective bargaining agreement. Right?

11 A. That is correct.

12 Q. And what is this list of things, without being specific,
13 what does this represent?

14 A. Just items that would have to be removed from our
15 contract, the current contract, that we had, that would
16 pertain to what the asset purchase agreement was calling for
17 when we were waive or remove our scope of successorship.
18 Anything that would mention the scope or successorship in the
19 contract would be listed here and have to be removed.

20 Q. Does this list also include other things that weren't in
21 the asset purchase agreement?

22 A. It did. It included a couple things that were not.

23 Q. Tell us any that are significant. By the section
24 reference?

25 A. Section 2.

1 Q. Section 2.

2 A. O, I believe it was, what we had, was a flight pay loss
3 bank that was paid for, we negotiated in our contract that
4 TWA would pay 9,000 hours a year for our ability to do
5 business as a union, locally, with the company. So if I
6 needed to come in and negotiate, that the company was
7 actually paying for my trip, if I was over a trip or on days
8 off, they were actually paying me. We negotiated this bank
9 with TWA that would pay for this. And it shows up as needing
10 to be removed. And that was no where in the asset purchase
11 agreement.

12 The other --

13 Q. Hold on. This list of stuff that they want you to
14 remove from your contract, Section 2, O, that is the flight
15 pay loss section?

16 A. That is the flight pay loss. That was not in the asset
17 purchase agreement. There was no cover letter that asked
18 about this, or said anything about it. It was just shown up
19 on this document here.

20 Q. Is there anything else significant in this list of
21 things that American is now for the first time asking for you
22 to remove? From your contract?

23 A. Yes. It would be a section 30.

24 Q. What is section 30. That is in the middle?

25 A. That would be the amendable date of the contract.

1 Q. And can you explain what that means?

2 A. Amendable date, you have a contract and your date is,
3 let's say, January, 2011, when you have that amendable date,
4 the contract is still in force, it doesn't go away. At that
5 point you have the right to bargain. And either side can do
6 it. Both sides can agree but you can say may, we don't like
7 this, this, this. We would like to open up the contract
8 negotiations to renegotiate either certain sections or even
9 the entire contract. It just depends, either side had that
10 ability to do that.

11 Q. American was now demanding you remove that?

12 A. Yes, they were.

13 Q. And, going forward, this was March 17?

14 THE COURT: They say remove it only in the
15 transition agreement. Right?

16 THE WITNESS: But that would be our new contract.
17 They wanted --

18 THE COURT: But it was anticipated that that
19 contract would become of no effect as soon as the two
20 airlines were merged together.

21 THE WITNESS: There was a question about that,
22 because the, we were told initially that American anticipated
23 the LLC lasting for three to five years. So when we saw this
24 removal of the amendable date, it raised a red flag because
25 that went against what, if American is saying they thought it

1 could last three to five years --

2 THE COURT: It didn't last a year.

3 A. It didn't at that point. They told us initially they
4 thought three to five years. So when they were doing this it
5 caught your attention, wait a minute. If you are thinking it
6 is going to be around for three to five years, if you want to
7 remove your amendable date and take it away so the contract
8 just goes away in a year, what do you do for the other two to
9 four years that you are in the LLC.

10 It was very confusing again to us. We didn't
11 understand where this came from. It wasn't required.

12 Q. It wasn't required, when we looked at your proposal on
13 March 5, you are saying we will waive scope but this new
14 collective bargaining agreement is going to be identical in
15 every other way to our old one?

16 A. That's correct.

17 Q. And that would have included the September, 03,
18 amendable date?

19 A. That's correct.

20 Q. That was your intention?

21 A. That was our intention.

22 Q. Why was that important to you?

23 A. Again, we were told initially that the LLC, the new
24 corporation, could last three to five years. If they removed
25 the amendable date of the contract, the contract goes away.

1 Once that is removed, the contract is go, you don't have the
2 right to request, to bargain. So where are you? You have no
3 contract, you have no right to bargain a contract. It just
4 goes away. And it concerned us.

5 Q. Who would have benefitted by that, by removing the
6 amendable date from the contract?

7 A. That would have been the American airline pilots.

8 THE COURT: But it turned out to be all theoretical
9 because the LLC didn't last a year. Right? The two that
10 were integrated the two lists were integrated the interim
11 contract would just go away.

12 THE WITNESS: No. If they wanted to remove the
13 amendable date, or --

14 THE COURT: No, in fact, as to what happened.
15 Whatever contract the pilots had with LLC, these two lists --

16 A. I see what you are saying. Because it was an expedited.

17 HE COURT: Because the National Mediation Board
18 integrated the two groups.

19 THE WITNESS: We didn't know that was going to
20 happen.

21 THE COURT: No, but in fact you weren't really
22 hurt, as it worked out, the change in the date really didn't
23 make a difference. It might have if it lasted three to five
24 years, but as it played out, it didn't make a difference.

25 A. In the end it didn't. You are right, but we didn't know

1 that, and that is where the concern was.

2 THE COURT: I understand why you are concerned, but
3 as it turned out the three to five year lasting thing never
4 happened.

5 A. That's correct.

6 Q. Now, moving forward from March 17 to the negotiation of
7 what became that big document there. What happened after
8 this?

9 A. When we received the document, meaning the negotiating
10 committee, we looked at the changes that were proposed. We
11 did question our contract administrator, where is this coming
12 from? What is this? We don't agree to this. Again, we
13 wanted to process agreement and we were standing firm on
14 that. We saw the removal of the flight pay loss, I asked the
15 question. Why is that in there? And Dave had got in touch
16 with --

17 Q. David who?

18 A. David Holtzman, our contract administrator, got in touch
19 with Terry Hayes, the TWA vice president of labor and asked
20 why is that there?

21 And the response was the APA doesn't have that and
22 they are not going to like that you have that. And I sat
23 there and I looked over to David Holtzman and I said who
24 cares?

25 We are two separate unions at this point, two

1 aseparate contracts. What does it matter if we have that and
2 we negotiated that in previous years, why do we take that out
3 because obviously, or TWA said to us, American pilots won't
4 like it. It didn't, I didn't understand --

5 MR. FRAM: Your Honor.

6 A. I didn't understand the dynamics.

7 MR. FRAM: I object to the impressions and
8 speculations. Let's just get the facts, please.

9 THE COURT: I agree with that.

10 Q. What was Mr. Holtzman's response?

11 A. He didn't understand. Same thing. He just didn't
12 understand what Terry was saying saying at the time.

13 Q. Were there any further negotiations between March 17 and
14 when this document got forwarded to you?

15 A. No. What we did was we told David Holtzman that we don't
16 agree to this, send back the counter. What we had sent
17 previously. And we would wait and see what the reply would
18 be from TWA, which we never received one.

19 Q. Did Mr. Holtzman do as you instructed him to inform the
20 other side that you were not agreeing to their proposal?

21 A. I don't know.

22 Q. Let me hand you D 115.

23 THE COURT: D 115?

24 MR. PRESS: Yes, your Honor.

25 Q. What is exhibit D 115?

1 THE COURT: Before we get to D 115, I want to ask
2 one more question. When you were going into LLC, before any
3 integration, and flying under the LLC banner, even though it
4 was owned by American, was it anticipated in the negotiations
5 that you would be paid Americans rates or TWA's rates.

6 A. Initially it would be TWA's rates and there was some
7 discussion as to when the effective date of the pay would
8 take effect. And we had kind of gone back and forth as to
9 the date, originally. I don't remember the exact date but it
10 was a little further out than we had wanted. And we had
11 wanted the date, we wanted it closing. We couldn't seem to
12 get that to happen.

13 THE COURT: When did it happen? Did it happen
14 while LLC was still flying.

15 THE WITNESS: Yeah, it did. It happened during the
16 LLC. I don't remember the exact time table.

17 THE COURT: Even before integration, whatever
18 agreement you had with LLC did raise your rates.

19 THE WITNESS: It raised the rates.

20 THE COURT: To the American rates.

21 THE WITNESS: Yes, it did.

22 Q. And when you went to the American pay rates and their
23 other contractual provisions from 2002, I believe, did you
24 make less money or more money?

25 A. As a total package, I made less money.

1 Q. How is that possible, if you are getting paid a higher
2 hourly rate, how is it possible for you to make less money.

3 MR. FRAM: I object. This gets --

4 THE COURT: No, I will allow that.

5 Q. I want to answer your question?

6 THE COURT: I will allow it.

7 A. There is more to pay than just getting a paycheck with
8 an hourly rate. We have, as you have seen examples of the
9 contract, quite thick. Your work rules add a lot to what I
10 would call the bottom line.

11 Q. To most, to many people, this phrase, work work rules,
12 has to meaning. What is that?

13 A. Work rules would be how owe on.

14 THE COURT: It comes out to how many hours you fly.

15 A. How many days you are away from home, how many hours you
16 might fly. Along, exactly along those lines.

17 So if you can work less or you can work as much as
18 you want, let's say I am single. I don't have a family, and
19 our contract at TWA was not, there were no pay caps. There
20 were no limits to what you could fly other than what the FAA,
21 the Federal Aviation Administration, puts down as the
22 absolute minimums.

23 THE COURT: And maximums..

24 A. Exactly. Minimums and maximums. Exactly. You could
25 make as much as you basically wanted to make if you were

1 willing to work. If you didn't mind being away from home.

2 Just the opposite, if you had family and you wanted
3 to spend more time at home, you could do do that. We had
4 those options. It is very complicated.

5 Q. NOW, when you say we you mean when you were employed by
6 TWA?

7 A. TWA pilots. It is very, very complicated. And when
8 people always have their own certain sections that they
9 might likes more than something else, depending on their
10 circumstances of how they want to work, what their lifestyle
11 might be. So there is a lot more to it. You can't just say
12 here is pay rate A, here is pay rate B. Because while on
13 paper there is a big difference and sometimes it can be
14 significant, I will grant that, it doesn't work out that way
15 when you actually are able to bid for your trips, which you
16 do the month prior to every month, how you do that. How you
17 pick what you like to fly. Your ability to do this. It is
18 the ability to drop trips. How easy if you need to have time
19 off can you drop something or you are stuck with it.

20 THE COURT: Mr. Altman, this is all very complex.
21 The bottom line is you said you made less money because you
22 had you got to fly less hours, right?

23 A. Y.

24 Es.

25 THE COURT: The work rules of TWA you said gave you

1 TWA pilots cumulatively less hours than you had at TWA.

2 A. You had more flexibility.

3 THE COURT: Were you getting as many hours, were
4 some pilots getting as many hours as they wanted?

5 A. Yes.

6 THE COURT: Those pilots were making a lot more
7 money than they made at TWA?

8 A. Yeah, they were, at TWA you could make more.

9 THE COURT: That is what I mean. At TWA.

10 A. You could work as much as you wanted basically within
11 the FAA constraints.

12 THE COURT: But not so with American.

13 THE WITNESS: That's correct.

14 THE COURT: So you were working less hours with
15 American, and notwithstanding the higher rate of pay, even a
16 significantly higher rate of pay, you were making less money.

17 A. That's correct. That is the easy way of saying it.

18 Q. Thank you, Mr. Altman. Did I hand you exhibit D 115?

19 A. Yes.

20 THE COURT: First of all, any objection? You are
21 offering it in evidence?

22 MR. PRESS: I will. It is a defendant's exhibit.

23 THE COURT: Any objection?

24 MR. FRAM: There is. I don't think this witness
25 can authenticate or testify about it, your Honor.

1 MR. PRESS: It is on their exhibit list.

2 MR. FRAM: Pardon me? Are we looking at the same
3 document?

4 (Off the record discussion.

5 THE COURT: Let me tell you what I have. I have a
6 cover letter which has an attachment 1, 2, 3, 4, 5, 6, 7,
7 eight documents.

8 MR. FRAM: We had a mix-up. I am sorry.

9 THE COURT: Excuse me. Let me finish. One of
10 those eight is attached. It is that one-page proposal of TWA
11 which is the seventh of the eight shown. The other seven
12 documents are not attached to my copy. Do you see what I am
13 talking about?

14 MR. FRAM: I do, your Honor.

15 THE COURT: So you are offering the cover and just
16 that one?

17 MR. PRESS: That is the way it came to us, and yes,
18 Judge.

19 THE COURT: Are you objecting to that?

20 MR. FRAM: No. We had a mix-up with numbers.
21 Counsel has shown me what he wants to do. I do not object to
22 this.

23 THE COURT: He is only admitting D 115. But I am
24 admitting it in the form it is now. In other words, I am not
25 necessarily admitting the other seven attachments. They may

1 be admissible at some later time in some other world. But as
2 you see, of the seven attachments, the eight attachments, the
3 seventh is said, CBA proposal. And that is what is, I
4 believe, is the one attached as part of 115. That is what I
5 am admitting.

6 MR. PRESS: Yes.

7 THE COURT: In evidence in its current form. And
8 there is no objection to it.

9 MR. FRAM: Thank you, your Honor.

10 Q. This is an email dated March 31, oh one, from Terry
11 Hayes, TWA vice president?

12 A. Yes.

13 Q. And he is sending it to somebody at Earthlink.net, that
14 is not you?

15 A. No.

16 Q. To David Holtzman, correct?

17 A. Yes.

18 Q. He cc's, Bernie Plum, that was his --

19 A. It was a lawyer.

20 Q. The subject is March 31, 2001, company proposal to ALPA.
21 Right?

22 A. That's correct.

23 Q. And apparently there were a number of attachments as the
24 Judge referenced, but only one is actually attached to what
25 we have, right?

1 A. That's correct.

2 Q. My question, Mr. Altman, is did David Holtzman forward
3 this email to you?

4 A. No. I had not seen this before.

5 Q. Do you know what proposal was attached to any of, was
6 part of any of those attachments?

7 A. No, I can't speak to any of that. I hadn't seen it.

8 Q. What was the next thing that happened important in the
9 negotiation of what came to be the actual transition
10 agreement?

11 A. We have the actual meeting, MEC meeting on April 2.

12 Q. On April 2. So in between, you made a proposal --

13 THE COURT: Counsel, prior to that April 2 meeting
14 TWA had filed a 1113 motion to reject your contract.

15 THE WITNESS: That's correct.

16 THE COURT: I mean ALPA, TWA contract.

17 A. That's correct.

18 Q. Between March 15 when you made your proposal and April 2
19 when the scope waiver decision was made, were there any
20 negotiations that your committee was part of?

21 A. No. We had not received back a counter to what we had
22 sent, or we had asked David Holtzman, we don't agree to that,
23 could you send it to them. Let's see what they send back.
24 We never heard anything back.

25 Q. Mr. Altman, this transition agreement, when was the

1 first time you saw this, in this form?

2 A. I don't remember the exact date but it was within the
3 week after the April 2nd meeting. 2001.

4 Q. Were you part of negotiating this at all?

5 A. Not that document. No.

6 Q. The document you had seen from TWA was this little five-
7 page thing, Exhibit 386, right?

8 A. That was the last document we had seen, was five pages.

9 Q. Do you know who negotiated the transition agreement
10 between TWA LLC and ALPA?

11 A. No, I don't.

12 Q. What committee in ALPA is charged with responsibility
13 for negotiating collective bargaining agreements?

14 A. That?

15 A. Would have been our negotiating committee.

16 THE COURT: What exhibit number is that?

17 MR. PRESS: Which one, the transition agreement? P
18 139. It is in evidence.

19 MR. PRESS: This would be a good time for a break,
20 Judge.

21 THE COURT: I am just looking at my watch. The
22 jury has been very patient. But they want to get the job
23 done. They want to keep moving.

24 Do not discuss the case among yourselves. Keep an
25 open mind until you have heard all the evidence. All rise

1 while the jury leaves.

2 (The jury leaves the courtroom.)

3 (Recess)

4 (The jury enters the courtroom.)

5 A L A N A L T M A N, RESUMES

6 THE COURT: Mr. Press, I have a few things I want
7 to ask Mr. Altman. Mr. Altman, do you have P-139?

8 MR. PRESS: Our copy is with Larry.

9 THE COURT: Can I have that?

10 THE COURT: Pretty thick. Like the space between
11 my ears.

12 THE COURT: Mr. Altman, this is the collective
13 bargaining agreement that governs the relationship between
14 TWA airlines, LLC, and ALPA.

15 A. That's correct.

16 THE COURT: It started after the closing of
17 American, it was transferred to this new entity. And was
18 scheduled to end at such time as the National Mediation Board
19 ruled they were one integrated airline.

20 A. That's correct.

21 THE COURT: And you didn't know it back in March or
22 whenever, you don't know how long that was going to be, it
23 could be two years, three years, five years.

24 A. That's correct.

25 Q. Did you play any role in the creation of this document?

1 A. No. This document, I did not.

2 THE COURT: That is what I am talking about. 139.
3 Did your negotiating committee have any role.

4 A. Not that I know of, no.

5 THE COURT: Well, turn to, towards the very end.
6 It would be after page, this page is unnumbered. About 74.
7 Do you see that the signature page. Do you have that
8 signature page?

9 A. Yes.

10 THE COURT: It is signed by Ronald A Kiel, chairman
11 of the TWA MEC negotiating committee. Was he in fact
12 chairman of that committee?

13 A. Yes, he was.

14 THE COURT: That was a committee you were on?

15 A. That's correct.

16 THE COURT: At least he had something to do with
17 it, he signed it, right?

18 A. I don't know. I think what -- I.

19 THE COURT: Okay. If you don't know.

20 A. I don't know.

21 THE COURT: Robert A Pastore signed it. Right? He
22 was chairman of the MEC. Of the TWA MEC. And Duane Woerth,
23 he was the president of the union, if I recall.

24 A. That's correct.

25 THE COURT: Was he full time in with the union.

1 A. Yes, he was.

2 THE COURT: Okay. Now, number 2. This agreement,
3 so long as it was in effect, however long, didn't affect your
4 seniority?

5 A. No, this was not a seniority.

6 THE COURT: This was preserved by its terms, I am
7 looking at page 65, preserved the seniority you had at TWA,
8 at TWA, Inc. Right?

9 In other words, American pilots couldn't come in
10 and jump you and take these TWA LLC flights.

11 A. They couldn't have done the flights in the first place.

12 THE COURT: It doesn't make a difference. Your
13 seniority, I mean the TWA pilots' seniority, wasn't affected
14 by this agreement. Work rules were affected, right. Work
15 rules, pay rates were affected.

16 A. That's right.

17 THE COURT: But seniority was not.

18 A. Seniority in the company is the date of hire with TWA.

19 THE COURT: Yes, but they define it here as either
20 LLC or any previous company that had been taken over which
21 would of course be TWA, Inc.

22 A. Correct.

23 THE COURT: There was no seniority effect, this
24 didn't adversely affect --

25 A. This wasn't going to affected seniority.

1 THE COURT: It affected other things, but as I
2 said, some things good, some things bad. But it didn't
3 affect seniority.

4 A. No.

5 THE COURT: Go ahead.

6 BY MR. PRESS:

7 Q. Mr. Ron Kiel was the chairman of the negotiating
8 committee. How many people were on the committee besides
9 yourself.

10 A. I believe four. Four or five. I don't remember
11 exactly.

12 Q. Would the committee, when I think of a committee, I
13 think of of people getting together, working together. Is
14 that how your committee worked?

15 A. That's correct.

16 Q. When did you committee business you did it as a group?

17 A. Yes.

18 Q. Was there one meeting where that document was discussed?

19 A. No. No. This document in its entirety was never
20 presented to the entire negotiating committee.

21 Q. Other than the fact that Mr. Kiel signed it, are you
22 aware of any evidence that anybody else on the negotiating
23 committee ever saw in before it got signed?

24 A. No.

25 THE COURT: When did you first see it?

1 A. It was after the April 2, it was within the week, right
2 after they signed it, I forget the date.

3 THE COURT: April 6.

4 A. April 6, it was in that timeframe we got a copy of it.

5 Q. Mr. Altman, April 2 was the date that the MEC voted to
6 waive scope, right?

7 A. That's correct.

8 Q. You were at that meeting?

9 A. Yes, I was.

10 Q. Were you aware before that meeting that TWA, Inc., in
11 the bankruptcy court had filed a motion under that Section
12 1113 to reject your contract?

13 A. I knew they filed a motion to reject the contract, yes.

14 Q. What was the MEC strategy as far as dealing with that
15 motion, before April 2?

16 A. Before April 2, all advisors that we had been dealing
17 with had told us that there was no reason to waive your
18 scope. Don't do it. You saw previous examples here, we were
19 going on the assumption of a processing agreement.

20 Q. I want to interrupt you. You said all advisors. Who
21 specifically were you referring to?

22 A. We had a group of advisors that were advising the MEC
23 merger committee, negotiating committee. We had Roland and
24 Bill Wilder who are our merger attorneys. We had our
25 contract administrator, Mr. David Holtzman. ALPA National

1 had provided a number of advisors. Clay Warner in legal, we
2 had Mr. Bob Christy. Mr. Seltzer. I forget the first name.

3 THE COURT: Seltzer was the bankruptcy guy?

4 A. I believe so. I forget the first name. We had a
5 gentleman by the name of Michael Glanzer. He was a financial
6 guy --

7 Q. Investment banker?

8 A. He was an investment banker. Thank you. We had Steve
9 Tumblin. He was a bankruptcy lawyer, attorney. So we had a
10 number of different people, varying backgrounds, that were
11 advising us.

12 Q. Mr. Altman, before the April 2 meeting, before that, did
13 you have personal contact with any of those advisors,
14 discussing the 1113 motion, and the notion of waiving scope?

15 A. We had had meetings, you know, throughout the timeframe,
16 where scope, that was the number one primary topic. You have
17 to waive your scope, that is what the company was asking for,
18 the asset purchase agreement, TWA, American, but advisors
19 were all stating there is no reason to. Don't waive your
20 scope.

21 Q. Let's be specific. Who said that?

22 A. Clay Warner, David Holtzman, Michael Glanzer, Steve
23 Tumblin, Mr. Seltzer. Did I leave somebody out? Mr.
24 Christy. Officially in the meeting. Everyone said there is
25 no reason to waive your scope at the time.

1 Q. I thought Mr. Christy was the one who said you had to?

2 A. I made the comment in the meeting but that was just, he
3 didn't stand up publicly, that was just 2 people.

4 Q. So going into the April 2 meeting, did you have a feel
5 for how you were going to decide the issue?

6 A. Yes. I had no reason to vote to waive my scope. I was
7 listening to what our advisors were telling us, I trusted
8 advisors and I listened to them. I wasn't going to waive
9 the scope.

10 Q. Were you listening to anybody else to reach that
11 opinion?

12 A. We had a meeting, Council 4, the Los Angeles domicile,
13 we had a meeting on March 30, 2001, went out, talked to the
14 pilots at a local hotel in Los Angeles, we gave an update of
15 what was going on, that would be my name, Glenn Steinke and
16 Pablo Lewin were the other officers for Council 4. Captain
17 rep and secretary treasurer. I had done an email to my first
18 officers, in Los Angeles, and all but one said don't waive
19 scope.

20 Q. And how many pilots in total about would that have been
21 that responded to your question?

22 A. It was roughly about 90 that responded.

23 Q. How many pilots did you represent?

24 A. I think there were about 120 total I think out there but
25 I think the number was closer, but I got a response from

1 about 90.

2 Q. So your constituents were wanting you to protect your
3 scope?

4 A. That's correct.

5 Q. The meeting you just mentioned, March 30, from Los
6 Angeles, were the minutes prepared of that meeting?

7 A. I believe there were, yes.

8 Q. D 365.

9 THE COURT: These are minutes of the March 30
10 meeting.

11 MR. FRAM: No objection to that going into
12 evidence, your Honor.

13 THE COURT: Okay. You are offering it, Mr. Press?

14 MR. PRESS: Yes.

15 THE COURT: D 365 is in evidence.

16 Q. Exhibit 365, are those minutes of the meeting you just
17 referenced, Mr. Altman?

18 A. That's correct.

19 Q. Did you, if you go to the second page there you see a
20 list of attendees, right?

21 A. That's correct.

22 Q. All right. 30 people attended the meeting it looks
23 like, right?

24 A. Correct.

25 Q. With that number of pilots showing up for a local

1 council meeting, would that be a good turnout, bad turnout or
2 about in the middle?

3 A. In Los Angeles, that was about average.

4 Q. Did you speak at this meeting?

5 A. Yes.

6 Q. What did you talk about?

7 A. I gave a briefing on the 1113 motion that had been
8 filed, being that I was on the negotiating committee, and I
9 was the one that was going to give the speech. I used a set
10 of talking points that I received from Roland Wilder, our
11 merger attorney, merger counsel, so that I didn't speak out
12 of turn or say something that wasn't right and I didn't want
13 to get into too much detail.

14 Q. What was the upshot of what you were telling the pilots
15 about the 1113 motion?

16 A. Basically it was expected. It wasn't a surprise because
17 we weren't waiving our scope, that advisors that we had been
18 speaking with had told us that there is no reason to waive
19 your scope, it is not necessary, it is not needed, don't do
20 it.

21 Q. If you go to the second page of the minutes there are
22 some resolutions, it says passed unanimously at the meeting?

23 A. I see that.

24 Q. Be it further resolved one. Can you read that?

25 A. "Be it further resolved that Council 4 pilots instruct

1 the Council 4 LEC officers to vigorously pursue the
2 protections that at all times the current and future TWA LLC
3 pilots and the retired pilots of TWA, Inc., shall be covered
4 by a collective bargaining agreement."

5 Q. What did you understand that to mean to you?

6 A. In any of our discussions we had with the pilots
7 present, it was we know you guys are working hard. You have
8 got a lot more information going than we know. Go out there,
9 do your best job for us. Get the best protections that you
10 can for the pilots.

11 THE COURT: That is not what this resolution is
12 about. This resolution, isn't this resolution about having
13 the continuation of ALPA so long as TWA LLC was flying as a
14 separate entity? Isn't that what this is all about?

15 A. Well, we were going to remain ALPA. I mean the union
16 wasn't going away.

17 THE COURT: No, only so long as there was a
18 separate --

19 A. Once there was a single carrier, that would go away.

20 THE COURT: ALPA would go away. But you wanted to
21 be sure that ALPA represented you while LLC was still flying.

22 A. They didn't want to have just a nothingness.

23 THE COURT: And you got that. ALPA remained -- TWA
24 LLC's bargaining agent until the two airlines were
25 integrated.

1 A. Yes.

2 THE COURT: As long as TWA LLC was flying as a
3 separate airline. You achieved what this resolution wanted
4 you to achieve.

5 A. But in the gist of the conversation that we had that
6 were there --

7 THE COURT: You can testify about that, but this
8 resolution, therefore, just two paragraphs, therefore, be it
9 resolved that Council 4 pilots instruct Council 4 LEC
10 officers vigorously pursue representation of the TWA LLC
11 pilots by the airline pilots association. Be it further
12 resolved the Council 4 instruct its officers to vigorously
13 pursue the protections at all times, to current and future
14 TWA LLC pilots and the retired pilots of TWA shall be covered
15 by the collective bargaining agreement. You achieved it.

16 A. And what was included in that, we did not want to waive
17 sections of our collective bargaining, they gave us
18 protections, and that was the gist of it. We wanted a full
19 contract.

20 THE COURT: In this agreement, though, there was
21 no waiver of seniority. TWA LLC labor agreement, this one
22 that you had, you didn't waive seniority.

23 A. The transition agreement was given to us only if we had
24 waived scope. If we didn't waive our scope of successorship,
25 we weren't going to have the transition agreement. They were

1 going to go forward with the 1113 motion and we didn't know
2 at that point it would be a different scenario. The
3 transition agreement was given to us as conditional upon if
4 you would waive your scope and successorship you will now
5 have these protections.

6 THE COURT: All right.

7 Q. Following up on the judge's comment, your constituents
8 wanted to make sure you were still represented by your union,
9 right?

10 A. That's correct.

11 Q. You agreed with that?

12 A. I did.

13 Q. Was was it important to have a union?

14 THE COURT: Not only a union, but this union.

15 Q. This union. Yes.

16 A. We needed union representation. There is no way that
17 you could go into a situation like this, a merger between two
18 companies and not be represented. How would you do this?
19 You were going to have 2,300 pilots going off on their own
20 trying to negotiate their own seniority. It doesn't make
21 sense. You wanted to keep the union, wanted to keep the Air
22 Line Pilots Association as your bargaining agent.

23 Q. On April 2 when you made the scope waiver, the committee
24 that was making the agreement with the pilots, they had not
25 reached agreement?

1 A. No, there was no agreement.

2 Q. You understood the two sides were far apart?

3 A. Yes, the merger committees were far a part.

4 THE COURT: Between the American pilots and ALPA,
5 there never was an agreement. Ever.

6 A. It wasn't mutually agreed upon. That's correct.

7 Q. So you knew that the struggle, seniority struggle,
8 between the two pilot groups was going to continue after
9 April 2?

10 A. That's correct.

11 Q. Your pilots were saying we need to have ALPA behind us?

12 A. That's correct.

13 Q. Okay.

14 Q. The meeting on April 2 was in St. Louis, right?

15 A. That's correct.

16 Q. Were you living in St. Louis at the time?

17 A. I was living in Los Angeles at the time

18 Q. When did you come in for the meeting?

19 A. I came in that prior Sunday evening.

20 Q. And the meeting started at 9, you were there?

21 A. That's correct.

22 Q. In the morning, what was, what business was conducted in
23 the beginning of the meeting?

24 A. In the beginning of the meeting we had normal MEC
25 business that we were conducting that we normally would have

1 to do, issues that would come up that would require the MEC
2 to vote, whether it be by resolution or discussion.

3 We received four or five I think issues that we
4 were talking about, I don't remember exactly which ones.

5 Q. And then you got to the issue at hand, the scope
6 waiver?

7 A. We took a break. We had a lunch break. We came back in
8 the afternoon. One-something in the afternoon. And the
9 scope waiver issue came up and we went into what is known as
10 executive session, where you would have guests and members.
11 Anybody could sit in on a MEC meeting, it was open.

12 THE COURT: You mean open to pilots.

13 A. Not the public, right, the public is into the sitting
14 in. Any pilot could come and sit in. Once you go into
15 executive session, there are a number of reasons why, you
16 might be talking about a person having a discipline issue.
17 Those can't be out in public. You go into executive
18 session. In this situation, because it was a very
19 confidential subject that was going on, we had to go into
20 executive session.

21 Q. And how long did you remain in executive sessions
22 talking about the scope waiver?

23 A. Until late in the afternoon, I want to say about five,
24 5:30 in the afternoon.

25 Q. Were there any ALPA advisors at this meeting?

1 A. Yes, there were. We had, our entire group of advisors
2 that were with us, David Holtzman, Mr. Glanzer, Mr. Tumblin,
3 Mr. Warner, Mr. Christy. Randy Babbitt had been there. He
4 was the former president of ALPA, now had his own consulting
5 firm.

6 Q. When you saw Mr. Babbitt there, former ALPA president,
7 did you ask why the current president isn't here instead?

8 A. I did actually. I asked where is Mr. Woerth, who is the
9 current president. This is a big issue. Why is he not
10 available. He had prior commitments. He was busy.

11 Q. Okay. So these advisors, did they go in with you, was
12 Roland Wilder there?

13 A. Our merger attorney, Roland Wilder, was there.

14 Q. Did all those advisors go into executive session with
15 you?

16 A. We had a meeting room we used in our MEC offices in St.
17 Louis. Every everybody came in and in there and we shut the
18 door.

19 Q. At the end of the day, Mr. Altman, how did you vote?

20 A. I voted to waive scope.

21 Q. And we looked at the minutes yesterday that showed how
22 you voted your ballots. You voted all of them to waive
23 scope?

24 A. That's correct.

25 Q. My question is why? You went in intending not to and

1 you did just the opposite?

2 A. When we went in to this meeting, advisors' advice
3 changed.

4 Q. What do you mean?

5 A. Instead of what we had been told, don't waive scope,
6 there is no reason to. We were told you have to waive scope,
7 you have to do it now. If you don't waive scope -- and it
8 was, there were emotions involved.

9 THE COURT: Emotions? Not motions. Emotions?.

10 A. Exactly.

11 MR. PRESS: One motion. 1113.

12 A. There was a lot of emotions involved and it was told
13 that you have to waive the scope, you have to do it now.
14 There is no time. It has to be done today. And what
15 convinced me were the comments, if you don't waive your
16 scope, the 1113 motion will be granted by the court, and it
17 was told it will happen. You will lose your contract. You
18 will lose your union representation. You will lose your
19 ability to grieve issues. And you will go into this new
20 company, TWA LLC, as nonunion, noncontract, at will
21 employees. And that concerned me.

22 The job of the LEC members is to protect jobs. All
23 but one of our advisors, Roland Wilder was the only one that
24 disagreed with the comments that afternoon, were telling us
25 to do this. My job as a MEC member and as per resolution was

1 to protect the job.

2 So at the end of the day I could not, my personal
3 feelings an aside, I could not make the decision based on
4 what advisors were telling us that theoretically could
5 jeopardize everybody's job.

6 Q. How many?

7 A. 2300 pilots, roughly, at TWA. The pressure was on. I
8 had to make a decision that would protect the jobs.

9 Q. Good they tell you a decision had to be made on April
10 2?

11 A. No. And that was part of the emotional conversations
12 that were going to going on. Comments were made that the
13 train had left the station. We heard that a number of times.
14 I didn't understand what that meant. It was just thrown out.

15 But it was a sense of urgency that I hadn't seen
16 before. There had been no urgency, it had been fairly
17 relaxed. You don't have to do it. Don't worry about it. It
18 is not going to succeed.

19 And then we are told immediately, the total change
20 that it is going to happen, you are going to lose everything,
21 and you are all going to be at will employees, and AMR is
22 American, and American, they have had a history of bad
23 relations. You want to subject everyone to being at will
24 employees in a situation like that, where if you called in
25 sick you could lose your job, theoretically. Couldn't do

1 that.

2 Q. These ALPA advisors, other than telling you to waive the
3 scope, did they give you any alternative strategies?

4 MR. FRAM: Could we know who the witness is saying
5 the specific individual who allegedly made the statement as
6 aopposed to grouping them.

7 THE COURT: He can only testify to what he
8 remembers.

9 Q. Can you address that objection?

10 A. I do remember one name in particular.

11 THE COURT: Okay.

12 A. I will say that it was Mr. Warner. I had dealt with
13 Clay Warner before, and this was a very different attitude
14 coming from him. It was 180 agree agrees and it sticks in my
15 mind because I had known him a little better than some of the
16 others because of the feelings on the negotiating committee.

17 THE COURT: He is an attorney with ALPA.

18 A. ALPA leg.

19 Q. He is an ALPA staff lawyer in Washington D.C.?

20 A. That's correct.

21 Q. That you dealt with. He assured you you shouldn't be
22 waiving scope. And we are going to win the 1113?

23 THE COURT: No, no. No. You are leading.

24 A. All right.

25 Q. What did he tell you before April 2?

1 A. Just what we were told, there is no need to waive scope.
2 You don't have to do it.

3 Q. On April 2 he flip-flopped and his opinion was what?

4 A. You have to do it, you have to do it now. There is no
5 time.

6 I did raise the question, because it was such a
7 huge decision, and normally we would send things out of a
8 magnitude like this to the pilot group, hey, this is what is
9 facing us, how do you vote. Yes or no. We would like to get
10 a pilot ratification. I was told specifically there is no
11 time.

12 Q. Wait. You asked for that to happen on April 2?

13 A. I would like to have this go out. That is a huge
14 decision to put on our shoulders. And we need to put this
15 out to, this is a total change in, you know, a
16 recommendations coming from advisors. So we should, in good
17 conscious, put this out to the pilot group and it had to be
18 done that day. And no one ever told us why.

19 Q. Other than waiving scope did they give you any
20 alternative strategy?

21 A. There were no alternatives offered.

22 Q. Did any of the MEC members suggest alternative
23 strategies?

24 A. Yes. The question was asked?

25 Q. What was that?

1 A. Alternative strategies was raised by Mr. Ted Case about
2 the ability, if they took the contract, of the right to
3 strike.

4 THE COURT: In other words, if there was no labor
5 contract at all, if the 1113 was granted, the issue raised
6 was --

7 A. Can you strike, without a labor contract.

8 Q. Before getting into what the response was, this right to
9 strike, a pilot that has an existing, that is working under a
10 collective bargaining agreement does not have the right to
11 strike. Is that correct?

12 A. Yes. That's correct. Certain circumstances through the
13 process negotiating, whatever might happen, and it is a very
14 long, lengthy drawn-out process before you are given that
15 Wright to walk off the job.

16 THE COURT: That is peculiar to the Railway Act as
17 distinct from the National Labor Relations general law
18 governing, right?

19 A. That's correct.

20 Q. The question was if the bankruptcy court rejects our
21 contract, and we don't have one, does that mean we have the
22 right to strike. That was the question posed?

23 A. That was the question.

24 Q. And who responded and what was the response?

25 A. The response was from Clay Warner and he said no.

1 Absolutely you do not have the right to strike.

2 Q. Do you recall any other advisors responding to the
3 question?

4 A. I don't recall the others. I just remember Clay,
5 speaking to that.

6 Q. P 136.

7 THE COURT: J?

8 MR. PRESS: P 136.

9 THE COURT: J.

10 MR. PRESS: It is J, I am sorry.

11 THE COURT: I have J 136.

12 MR. PRESS: J 136. That's correct.

13 Q. Do you have that in front of you?

14 A. Yes, I do.

15 Q. Mr. Seltzer was the bankruptcy lawyer. He was there, on
16 April 2?

17 A. That's correct. One of the advisors present.

18 Q. What did he say about your chances or prospects of
19 prevailing in the bankruptcy court on this 1113 motion?

20 A. 99 point 99 percent that you won't.

21 Q. Is that a quote?

22 A. That was a quote.

23 Q. 99.9 chance you will fail and the Court will take your
24 contract and reject it?

25 A. That's correct.

1 Q. This is a brief that was filed in the bankruptcy court
2 three days before your meeting.

3 THE COURT: What are you showing?

4 MR. PRESS: Exhibit J 136.

5 THE COURT: Okay.

6 Q. Just for, let's start, stay at the front page. What is
7 the document titled after you get a court caption. Then
8 there is a title to it. Objection. Do you see that?

9 A. Objection of Air Line Pilots Association International
10 in opposing to the debtor TWA's motion for an order
11 authorizing the rejection of its collective bargaining
12 agreement pursuant to Section 1113.

13 Q. So this is ALPA's objection to the 1113 motion. Right?

14 A. Yes.

15 Q. If you go to page 30 there are some signatures there.
16 There is one signature, three law firms are listed there,
17 right?

18 A. That's correct.

19 Q. The middle one is Cohen, Weiss, and Simon and Richard
20 Seltzer, correct right?

21 A. That's correct.

22 Q. Mr. Tumblin's firm is LeBoeuf?

23 A. That's correct.

24 Q. Both of those gentlemen were at this meeting, correct?

25 A. Yes, they were.

1 Q. Did they bring a copy of this and distribute it at the
2 meeting?

3 A. No.

4 Q. This brief?

5 A. No.

6 Q. For the record, how many pages of argument is in this
7 brief, before they signed it?

8 A. 29 pages. 30.

9 THE COURT: Not counting exhibits.

10 MR. PRESS: Not counting exhibits.

11 A. Looks like 30 pages.

12 Q. 30 pages, and they sum up, they conclude saying for the
13 foregoing reasons in those 30 pages, what?

14 A. The TWA's motion to reject the CBA under Section 1113
15 should be denied.

16 Q. 30 pages of reasons why it should be denied. Did they
17 articulate any of those reasons to you on April 2?

18 A. No.

19 A. I never seen this document.

20 Q. If you go to page 29 of the brief, Mr. Altman, you will
21 see a footnote. I think it is footnote number 24.

22 A. Okay.

23 Q. Can we have that enlarged? Can you read the first
24 sentence of that footnote 24, the first footnote?

25 A. A union's right to strike after a bankruptcy court

1 approves rejection of collective bargaining agreement is
2 clear.

3 Q. The right to strike is clear is what the lawyer said in
4 the brief, right?

5 A. That's correct.

6 Q. What did they tell you at your meeting three days
7 later?

8 A. Absolutely not. There is no right to strike.

9 Q. If you go to page 5 of the brief. Paragraph 7. Can you
10 read that?

11 THE COURT: Footnote 7.

12 MR. PRESS: I am sorry. Paragraph number 7 in the
13 body.

14 THE COURT: Okay.

15 Q. What are the bankruptcy lawyers telling the Court in
16 that, subsection A?

17 A. Of section 1 provides for recognition of ALPA as the
18 representative of TWA's pilots, and is the one subsection of
19 section 1 that TWA does not seek to reject.

20 Q. Okay. Now, what does that mean when you read it, what
21 do you understand that to mean?

22 A. It is going to, ALPA will be recognized as our
23 bargaining agent.

24 Q. TWA, while they were seeking to reject your collective
25 bargaining agreement they were not seek to go terminate

1 ALPA's representation?

2 A. No.

3 Q. That what is this said?

4 A. They would copy ALPA as the bargaining agent.

5 Q. What do they tell you three days later about that?

6 A. If we went through with the 1113 and it would be granted
7 that we would lose not only the contract but our bargaining,
8 our representative.

9 Q. And remember, getting back to your meeting that the
10 Judge was talking to you about with your local council and
11 their concern was what?

12 A. Best deal you can do.

13 Q. And don't lose ALPA representation?

14 A. Don't lose ALPA representation. Yeah. No one wanted to
15 remove ALPA as our representative.

16 Q. And according to this brief, that wasn't, there was no
17 chance of that happening, right?

18 A. According to the brief.

19 Q. At this meeting on April 2 did anybody use words to this
20 effect that if you waive scope, you need to understand that
21 when it comes to the seniority negotiation, that is going on,
22 game over. Quote. Did anybody use words to that effect?

23 A. I have never heard that mentioned before.

24 Q. Mr. Altman, you were not involved in the seniority --
25 there were seniority negotiations between the two pilot

1 groups after this, right?

2 A. That's correct.

3 Q. You were not involved in that?

4 A. I was not a member of the merger committee so I was not
5 involved.

6 Q. But you were still on the MEC and stayed advised of
7 their status?

8 A. That's correct.

9 Q. Generally tell us what the status was come October?

10 A. Not good. No agreement had been reached. The APA came
11 out and said they were going to staple more than half the TWA
12 pilots to the bottom of the list, in other words, we were all
13 slotted on the bottom, and they were going to do roughly and
14 eight to one ratio starting from the bottom of the list
15 working up for the rest of the people.

16 Q. There was testimony by Mr. Case about a meeting in
17 Washington, DC, the end of October, October 23. Were you
18 there?

19 A. Yes, I was.

20 Q. And there was a vote by the MEC on whether to accept the
21 American pilots seniority proposal. Correct?

22 A. That's correct.

23 Q. How did you vote?

24 A. I abstained from that vote. In other words, I couldn't
25 vote yes, I couldn't vote no. And the reason being, if we

1 were handed three pages of bullet points, and I did not know
2 what three pages of bullet points would turn into, reference
3 back to earlier in the timeframe when we were working on a
4 transition agreement, the last document I had seen was five
5 pages long. Comes back down after the fact and I don't know,
6 100 something pages long, so I didn't have time to study that
7 and no what, and I didn't see a complete language package
8 presented in front of me --

9 THE COURT: Who prepared this bullet points?

10 A. I don't remember where the bullet points came from. It
11 bass handed to us by Jeff Brundage who was the vice president
12 of labor at American itself. I don't know who prepared them,
13 though. He may have gotten them from the APA. I just didn't
14 have the information to vote either up or down. I just
15 couldn't do it. I wasn't going to do it.

16 Q. Now, what came down shortly after that meeting, first of
17 all, the MEC did reject the proposal, right?

18 A. That's correct.

19 Q. And what came shortly was this Supplement CC, which was
20 which was the seniority of the two, the integration of the
21 two lists, right?

22 A. That's correct.

23 Q. And did that differ in any important way from what you
24 understood the proposal was in October?

25 A. No, it was the same. It was more than half stapled and

1 the ratio, the slots from the bottom to the top of the list.

2 Q. Mr. Altman, you were hired in January, 97, by TWA.

3 Correct?

4 A. That's correct.

5 Q. Were you part of the staple?

6 A. Yes, I was.

7 THE COURT: Was that based on your seniority, the
8 fact that you were one of the 1300 that were stapled.

9 THE WITNESS: Yeah, where they came with the
10 number.

11 THE COURT: TWA took the list and stapled the
12 bottom two thirds.

13 THE WITNESS: Yup. They drew a line and said there
14 you, you go, you are stapled.

15 THE COURT: People above that seniority got the one
16 in eight figure.

17 A. Starting from the reverse up, is how they did it.

18 Q. Exhibit J 314, Mr. Fram.

19 MR. FRAM: Thank you.

20 THE COURT: Any objection?

21 MR. FRAM: No, none of the J's, your Honor.

22 THE COURT: Okay. J 314 is in evidence.

23 Q. Exhibit J 314 is a lengthy document. What is it, Mr.
24 Altman?

25 A. It looks like a seniority list of TWA pilots.

1 Q. Are you on it?

2 A. Yes, I am.

3 Q. Where?

4 A. There is no page number.

5 THE COURT: Near the bottom.

6 THE WITNESS: Thanks.

7 MR. PRESS: Not really. Let's be clear. This is
8 just TWA pilots. Right?

9 A. Yes.

10 Q. This was a list before the American deal?

11 A. That's correct.

12 Q. Before you got integrated with the American pilots?

13 A. That's correct. If you look next to my name on the left
14 side, 17 38. On the far left. Seniority number.

15 Q. If you will look at the bottom, there is ALPA number,
16 document numbers, what page are you on?

17 A. Looks like 028928.

18 Q. Your seniority number was what?

19 A. 1738. 1738.

20 Q. And approximately how many TWA pilots were behind you?

21 A. The list ends at 2349.

22 A. Six, 700 people.

23 Q. All right. But when you were hired in '97 you were the
24 last?

25 A. I was at the bottom of the list.

1 Q. So in the four years that you were employed, 600 pilots
2 were hired behind you?

3 A. I moved up the list fairly quickly.

4 Q. And why, how was that possible?

5 A. TWA was doing a lot of hiring. There was growth, there
6 were new airplanes coming. So it was actually a very
7 exciting time to be moving up a list that quickly.

8 Q. I am going to hand him J 365 which is the combined list.
9 The original is with Larry. I don't want him to dig it out
10 so I will give you my copy.

11 THE COURT: That is in evidence.

12 MR. PRESS: It is in evidence, Judge.

13 Q. That is the combined list, after you guys got stapled to
14 the American list, right?

15 A. That's correct.

16 Q. Where are you on that. If you go to page 7143, if you
17 need this?

18 A. I will try to find the page. I don't have a 7143, 43.
19 I have a 70 -- it may take me a few minutes to look for it.

20 Q. 7143. The document numbers?

21 A. Oh, okay.

22 A. I have it.

23 Q. Where are you on the combined seniority list with the
24 American pilots?

25 A. Looks like 13,236.

1 Q. How 67 seniority did you lose?

2 A. A lot.

3 Q. You were furloughed from TWA LLC when again?

4 A. January, 2003.

5 Q. Have you been called back by American to work?

6 A. No, I have not.

7 Q. Just so the jury understands that, recalls from furlough
8 happen in inverse seniority order, right?

9 A. That's correct. So they are going from the top of the
10 list, they work their way down.

11 Q. They haven't made their way down to you yet?

12 A. No, they haven't.

13 MR. PRESS: That I that is all I have, Judge.

14 THE COURT: Okay. Cross examine.

15 MR. FRAM: Thank you, your Honor.

16 CROSS EXAMINATION.

17 BY MR. FRAM:

18 Q. Mr. Altman, you testified here today that you attended a
19 meeting on April 2 of 2001 of the TWA MEC?

20 A. That's correct.

21 Q. You testified that Richard Seltzer, an attorney, was
22 present at the meeting?

23 A. That's correct.

24 Q. It is your testimony, sir, that Richard Seltzer advised
25 you and the other members of the MEC that there was a 99.9

1 percent chance that the Section 1113 motion would be granted?

2 A. That's correct.

3 Q. Sir, do you recall when Mr. Katz took your deposition in
4 this case on April 28 of this year, about six weeks or so
5 about six weeks or so ago?

6 A. I remember the deposition.

7 Q. Do you recall being deposed in Las Vegas as part of the
8 preparation for this trial?

9 A. That's correct.

10 Q. Do you recall, sir, being sworn to tell the truth, the
11 whole truth, and nothing but the truth, before you gave your
12 deposition testimony?

13 A. That's correct.

14 MR. FRAM: Your Honor, I have the original of the
15 transcript for your Honor.

16 THE COURT: Okay.

17 Q. Again, sir, I show you a copy of the transcript of your
18 deposition. I am going to ask you, sir, to turn, please, to
19 the --

20 THE COURT: Let me tell the jury, I think you know,
21 that in our practice the attorneys are allowed to question
22 potential witnesses outside the Court before a trial starts,
23 and it is usually done in a lawyer's office, but it can be
24 done anywhere, and the witness is placed under oath, and
25 those answers given to any questions have the same force, if

1 they are admitted here or heard in court, have the same
2 effect as the testimony would have in court.

3 MR. FRAM: Thank you, your Honor.

4 Q. Mr. Altman, turn, please. --

5 MR. PRESS: Mr. Fram, do you have a copy of the
6 transcript for me?

7 MR. FRAM: I don't know if we have an extra copy.

8 THE COURT: If you don't have it, you can use mine.

9 MR. FRAM: Or look over my shoulder.

10 THE COURT: Keep things rolling.

11 MR. FRAM: We have one, your Honor. Page 168. I
12 would ask you to refer to line 12. You are being questioned
13 about what happened at the April 2 meeting. Mr. Katz asked
14 you:

15 "What did Richard Seltzer say at the April 2
16 meeting?"

17 Your answer was, "I don't recall who said what to
18 us on an individual basis."

19 "QUESTION: Do you recall anything that Richard
20 Seltzer said at the meeting?

21 "ANSWER: No, I remember what was told to us."

22 Did I read that correctly, sir?

23 A. Yes, you did.

24 Q. So your recollection of the April 2 meeting is better
25 today than it was about six weeks ago?

1 A. When I went to the deposition --

2 Q. Can you answer my question? Is your recollection better
3 today?

4 A. Yes, it is.

5 Q. When you were deposed back in April you testified that
6 you hadn't looked at any documents or even thought about any
7 of these issues for ten years. Do you recall that?

8 A. That's correct.

9 Q. Have you taken some time since your deposition to look
10 at documents and to try to recall what happened?

11 A. Yeah, I prepared for this trial.

12 Q. Okay. And how soon before your deposition on April 28
13 were you contacted about you being involved in this trial,
14 sir?

15 A. Maybe a week before beforehand. It wasn't very long.

16 Q. And the person who contacted you was what?

17 MR. PRESS: Judge, I think this invades the
18 privilege.

19 MR. FRAM: Oh, no. Let me rephrase, your Honor.

20 THE COURT: All right. Skirt around that.

21 Q. The person who contacted you was Howard Hollander,
22 correct?

23 A. Yes.

24 Q. Mr. Hollander asked you if you would spend some time
25 with the attorneys representing him in this case. Yes?

1 A. No.

2 Q. I see.

3 A. No. What Howard asked me, if I would be willing to
4 possibly testify at the trial, and I said sure. Whatever you
5 guys need, I can do it. I haven't been involved in ten
6 years, but you I can do it if you would like.

7 Q. Sir, did you attend a meeting of the TWA MEC on March 21
8 and 22 of 2001?

9 A. I am trying to remember the dates. I don't remember.
10 If there was a MEC meeting, I would suspect that I did.

11 Q. Did you review documents to try to bring events back to
12 you in preparation for you your testimony?

13 A. Yeah, there are a lot of documents and a lot of dates.

14 Q. Did you review any documents other than the ones you
15 were asked about by Mr. Press on direct?

16 A. I went through a lot of different documents.

17 Q. Let me ask you, I am going to refer you to D 223 which
18 is in evidence, and ask if you recognize those as the
19 official minutes of the TWA MEC meeting on the dates
20 indicated, March 21 and 22?

21 A. Yeah, okay. That's correct.

22 Q. You listed under Council 4?

23 A. Yes, that's correct.

24 Q. Now, there was some discussion at that meeting about the
25 fact that a Section 1113 motion had been filed. Do you

1 recall that?

2 A. On the second page, vice chairman gave a brief on it,
3 that's correct.

4 Q. Do you recall any comments that were made by advisors
5 during that meeting?

6 A. And tell us, sir, without looking at the document, do
7 you recall without looking at the document anything that any
8 of advisors said at the meeting.

9 A. Not, I can't speak to that because it was ten years ago.
10 Without looking at the document, I don't know who was present
11 and who wasn't.

12 Q. Do you recall that there was a period of time when the
13 meeting went into executive session?

14 A. I don't remember, but if it says it did, it did. Ten
15 years ago.

16 Q. Page 3 of the document document, please. Thursday,
17 March 22, 2001. Just blow up where it says transaction
18 update on the very bottom, merger committee.

19 A. Okay.

20 Q. You see it says 9:15 RAUTENBERG/YOUNG move to enter into
21 executive session. Vote passed?

22 A. I see that.

23 Q. Do you agree on the next page that the MEC remained in
24 executive session until 12:30. Which would have been over
25 three years.

1 A. That's correct.

2 Q. Do you recall advisors saying things to the members of
3 the MEC about the pending 1113 motion?

4 A. I don't remember who was at this meeting in terms of
5 advisors.

6 Q. Well, do you remember advisors -- regardless of whether
7 you remember who was there, do you remember advice about the
8 Section 1113 motion?

9 A. All the advice that we had received prior to April 2nd
10 was you don't need to waive your scope.

11 Q. Okay. My question, sir, was about the 1113 motion. Are
12 you with me?

13 A. Yeah.

14 Q. Do you agree that the issue of whether the 1113 motion
15 would be granted or denied was different from the issue of
16 whether scope had to be waived or not?

17 A. I don't remember if it was discussed at that executive
18 session. I am not going to speak on that if I don't remember
19 it.

20 Q. I asked you whether you understood that the Section 1113
21 motion, the issue of whether it would be granted or denied,
22 was a separate issue from waiving scope?

23 A. Yes, 1113 was a separate issue. That was if we did not
24 waive our scope they would go ahead with the 1113 motion.

25 Q. But what was TWA, as you understand it, trying to

1 achieve through the 1113 motion?

2 A. They wanted to, or what they told us, was that if we
3 didn't voluntary waive our scope and successorship that they
4 would go to the Court and ask for it that way.

5 Q. Do you recall that the Section 1113 motion sought to
6 reject the entire collective bargaining agreement? Do you
7 recall that?

8 A. Yes, I do.

9 Q. Let's go back to this meeting. Do you recall what any
10 of advisors said with respect to Section 1113 or anything
11 else during that meeting?

12 A. No.

13 Q. No?

14 A. No. Not in the executive session, I sure don't.

15 Q. Do you recall what Mr. Seltzer said about the chances
16 that the Section 1113 motion would be granted?

17 A. Not in this meeting, I don't.

18 Q. But you do recall that the, that he told you and others
19 on April 2 that there was a 99 percent chance it would be
20 granted?

21 A. That's correct.

22 Q. You testified that you were surprised because that was
23 contrary to the prior advice, yes?

24 A. That's correct.

25 Q. Does that help you remember that the advice Mr. Seltzer

1 would have given on March 22 would have been that the Section
2 1113 motion would not be granted?

3 MR. PRESS: Judge, I object. He is really trying
4 to pull stuff out of his head that isn't there. I object to
5 it. He is asking him to speculate.

6 THE COURT: He seems to be handling it pretty well.

7 MR. PRESS: Okay.

8 THE COURT: I am going to let him move forward.

9 Q. Mr. Altman, let's break it down while we are on the same
10 page. You testified that Mr. Seltzer told you and the other
11 MEC members on April 2 that there was a 99.9 percent chance
12 that the Section 1113 motion would be granted, right?

13 A. That's correct.

14 Q. You said that was a surprise, that that was different
15 from the advice that you had received previously. Yes?

16 A. That's correct.

17 Q. So does that refresh your memory that the advice on
18 March 22 was that, was something other than that, with
19 respect to the Section 1113 motion?

20 A. No, because I don't remember if they were there on the
21 22nd. I can't speak to the date of when, you know, if they
22 said it that day or not.

23 Q. In fact, in your mind, all of the meetings in March ran
24 together and you were unable to distinguish what was
25 discussed back and forth at those meetings, right?

1 A. No. I could distinguish what was being discussed. We
2 had daily meetings. It was normally the same topic over and
3 over again, it was the topic of what was important to us.
4 But as to what was talked about in the executive session, if
5 I don't even know if advisors were at this meeting on that
6 day. I know what advice we were given prior April 2. We
7 were all given the same advise.

8 Q. Do you recall Mr. Warner at the meeting on March 22
9 drawing on the flip board outlining the different possible
10 outcomes of the Section 1113 motion?

11 A. No.

12 Q.

13 A. I don't remember if he was there on the 21, 22.

14 Q. Do you remember any of advisors who were there on the
15 21?

16 A. Actually I don't remember any of advisors being there.

17 Q. You testified before that a meeting on January 23, 24,
18 and 25, was the first time you heard about the likelihood
19 that the TWA pilots would have to waive scope?

20 A. No, that is not what I heard.

21 Q. What did you hear, you said you heard about something
22 for the first time on that meeting?

23 A. No, it was a passing excellent that was made comment
24 that was made to myself and other members of the negotiating
25 committee, it was just you guys are going to have to waive

1 scope. It came from the economic and financial analysis
2 adviser, Mr. Bob Christy. It wasn't done in the formal
3 setting when we started the meeting, he made the comment to
4 us and I just brushed it off.

5 Q. And was that that the first time that you heard that the
6 pilots might have to waive scope?

7 A. /TPHAFRPBLGTS was the first time anybody had said
8 something like that to us.

9 Q. I am going to hand you, sir, D 242. And ask you to
10 confirm that these are the official minutes of the TWA MEC
11 meeting on January 11, 2001?

12 THE COURT: The MEC?

13 MR. FRAM: Yes, your Honor.

14 A. Well, I would say they are the minutes. I haven't seen
15 these in ten years, nor have I had access to them. So I will
16 say that they are and they have to be official.

17 MR. FRAM: Your Honor, I move D 242 into evidence.

18 MR. PRESS: No objection.

19 THE COURT: Okay. D /STWO 42 in evidence.

20 Q. Mr. Altman, so this was not among the documents that you
21 reviewed to prepare for your testimony in court. Correct?

22 A. I don't remember seeing this one.

23 Q. Do you agree you were present at this meeting?

24 A. Yes, I was.

25 Q. And it shows you I guess as a committee member. Let's

1 blowup where it says committee members. I see you are listed
2 as a sergeant at arms.

3 A. That's correct.

4 Q. And the first thing that happened below that at 9 ten
5 was master chairman report Bob Pastore. Captain Pastore
6 talked about the events leading up to the bankruptcy, yes?

7 A. That's correct.

8 THE COURT: It says committee members. What
9 committee.

10 A. I was on the negotiating committee.

11 THE COURT: So that referred to the negotiating
12 committee.

13 A. We had negotiating people there, I see --

14 THE COURT: No, no. It says committee members.
15 There is a list of, I want to know what committee.

16 A. Not all of them. They are different committees.

17 THE COURT: Anybody who was a member of a committee
18 is on here.

19 THE WITNESS: If he was available.

20 Q. All the committee members get lumped together for the
21 purposes of the note?

22 A. That's correct.

23 Q. The committee you were on that point was the negotiating
24 committee?

25 A. That's correct.

1 Q. You had been on the negotiating committee for most of
2 2000. Is that correct?

3 A. That's correct.

4 Q. As part of your work on the negotiating committee had
5 you learned information about TWA's financial affairs?

6 A. Yes.

7 Q. One of the things that happened in 2000 is that TWA
8 stopped making payments into the so-called DAP fund. Do you
9 recall that?

10 A. Yes, I do.

11 Q. TWA came back to the pilots, their own pilots and asked
12 for some concessions because of it is difficult financial
13 circumstances?

14 A. That's correct.

15 Q. And you became aware in your role on the negotiating
16 committee that TWA was being shopped around for a potential
17 transaction because of its bad financial status. Correct?

18 A. No. That is not correct. Not because of their bad
19 financial status. The industry at the time, there were a lot
20 of mergers that were being talked about. That was pretty
21 standard at that timeframe.

22 Q. What was your understanding of TWA's financial condition
23 toward the end of 2000?

24 A. Nothing different than it had been since I had been
25 there, it had never been a very strong financially sound

1 carrier. I had no reason to believe that it was in any worse
2 situation than it had been. No one of showed us any proof,
3 any numbers, or anything else, anything different.

4 Q. So were you not getting reports from Mr. Pastore who was
5 on the board of TWA about its dire financial condition. Is
6 that your testimony?

7 A. It wasn't reports of dire financial situation. You
8 brought up the point that the company had asked for
9 concessions, and one of their main sticking points in their
10 concessions was that they wanted to have none seniority list
11 instructors in the training center and their total savings
12 was 17 million dollars a year in their concession package.
13 If you are in dire financial straits, I don't know how 17
14 million dollars is going to save the company.

15 Q. Let's turn to the second page of the minutes, please.
16 Under questions and answers. You see where it says Judge
17 Ralph Mabey. LeBouef, Lamb, Green and McRae. Do you see
18 that?

19 A. Yes, I do.

20 Q. Who was Judge Mabey?

21 A. He was a partner with Steve Tumblin, in their firm.

22 Q. And he was a retired federal bankruptcy judge, correct?

23 A. Correct.

24 Q. He had enormous expertise and experience in dealing with
25 bankruptcy issues, correct?

1 A. Yes.

2 Q. He gave a briefing with respect to one of the bankruptcy
3 hearings?

4 A. He gave us a briefing on it, that's correct.

5 Q. And I am just going to pick up on the third line. The
6 minutes indicate that the court, referring to the bankruptcy
7 court, also ruled on the sale or auction of the airline on
8 January 27.

9 The sale must be concluded by May 30. What sale
10 did you understand him to be referring to?

11 A. That would be the asset purchase.

12 Q. That would be the sale of TWA's assets to American
13 Airlines?

14 A. That's correct.

15 Q. And then he said, it says here, Mabey addressed employee
16 matters. Before the sale closed TWA shall amend the
17 collective bargaining agreement with regard to scope,
18 benefits, and seniority integration. ALPA's scope is in
19 place and cannot be changed by TWA, but could slow the
20 process down. However, if American walks away, what do you
21 have left? This means that we will need to negotiate the
22 best possible deal. We can take this to court, but risking
23 American walking away from the deal."

24 That is what he said.

25 A. I don't agree with the walking away comment that was

1 made.

2 THE COURT: The question is not whether you agree
3 with it. The question is, is that what he said.

4 A. That was his opinion. This is the judge's opinion in
5 the case.

6 Q. That is the information and advice he communicated to
7 the group. Yes?

8 A. That is what he said, yes.

9 Q. Well, did you have any reason to disagree or not credit
10 what this former federal bankruptcy judge was telling you and
11 the other members of the MEC?

12 A. Yes, we did.

13 Q. Why, let me ask you a question. Why were you skeptical
14 of what Judge Mabey was telling the pilot group?

15 A. In.

16 A. In public communications, American Airlines was putting
17 out about this deal, they were talking about how great this
18 was. Bragging about this in the press. We are going to be
19 the largest airline in the world. There was a third party
20 involved there. It was going to be part of U.S. Air. It was
21 going to be a three- party deal originally. Mr. Don Carty
22 who, was the CEO of American Airlines at the time, was
23 staking his reputation and said he was staking his reputation
24 on this deal.

25 THE COURT: Who was present?

1 A. Don Carty.

2 THE COURT: How do you spell that?

3 A. C A R T Y.

4 THE COURT: President of?

5 A. CEO of American Airlines, AMR Corporation. He publicly
6 came out and said I am staking my reputation on this. So
7 when you heard the public comments coming from the American
8 side, how great this was going to be, we are going to be
9 number 1, we need this to be competitive, Mr. Bob Keuwa, who
10 was vice president of flight at American Airlines was telling
11 his people this was a great deal. We need this to be number
12 one, we need this to be competitive. Why would they in one,
13 publicly go out and say what a great deal this is, and then
14 turn around and say if you don't like the scope, your job
15 protections, as I said earlier, the best protection you have
16 in the contract, we are going to walk away from the deal. It
17 didn't make sense. It was conflicting.

18 Q. But the American people were communicating that if the
19 deal with did not move forward quickly that they would walk
20 away, right?

21 A. No, that wasn't communicated by American to us.

22 Q. Wasn't that communicated to you as Americans position?

23 A. That was told to us that was Americans position, but I
24 never heard from anybody at American Airlines say that to me.
25 He heard Mr. Terry Hayes.

1 Q. Terry Hayes, who was with TWA, say American is going to
2 walk away from the deal?

3 A. Yes.

4 Q. And you thought American was walking, right?

5 A. I didn't believe it. It didn't make sense. There was
6 conflicting information. You just figured it was standard
7 negotiating ploys and tactics.

8 Q. You thought is what scare tactics, right?

9 A. Yes, I did.

10 Q. You told us in your deposition that you thought it was,
11 it was a BS excuse, right?

12 A. That's correct.

13 Q. A BS excuse so that American and TWA could get the upper
14 hand on the TWA pilots, in negotiations?

15 A. That's correct.

16 Q. Now, what Judge Mabey told the group on May 11 was that
17 he reminded the group that the asset purchase agreement
18 required a waiver of scope. Yes?

19 A. That's correct.

20 Q. You all understood that?

21 A. Yes.

22 Q. He also told everybody there was the danger of American
23 walking away from the deal?

24 A. That was his opinion.

25 Q. And his advice at that point in time was that the TWA

1 pilots would need to negotiate the best possible deal with
2 American. Yes?

3 A. That was his opinion, yes.

4 Q. And you disagreed with his opinion. Is what that what
5 you are telling us. You felt there were options other than
6 negotiating the best possible deal?

7 A. Our bankruptcy, our merger county, Roland Wilder, had
8 differing opinions, and we had a did number of different
9 advisors. Most all were saying the same thing, the same
10 tactic of you don't have to waive your scope, but Mr. Wilder
11 said no, you don't, I have a plan, I have an idea here.
12 Going forward. It was too early in the process to just throw
13 in the towel like this and say we are done, we are going to
14 waive scope.

15 Q. And what happened is you and the other members of the
16 negotiating committee negotiated back and forth through
17 February, through March, and got the best possible deal that
18 you could get on the table from TWA. Correct?

19 A. No. We negotiated for twelve days and then we, or
20 fourteen days, and we never heard from them again and they
21 presented a transition agreement that I had not seen. That
22 was not negotiated by me.

23 Q. When do you claim the last negotiation sessions were
24 made?

25 A. Their counter, on the 17th, that they gave us on the

1 17th of March.

2 Q. Isn't it a fact, sir, that there were further proposals
3 exchanged by the negotiating committees on March 20?

4 A. I don't remember that many.

5 Q. Isn't it a fact that the negotiating committees met by
6 telephone on March 26 of 2001?

7 A. The negotiating committee, we talked every single day.

8 Q. Sir, isn't it a fact that the negotiating committees of
9 the TWA MEC negotiating committee met by telephone, had a
10 telephone conference with the representatives of TWA on March
11 on March 26?

12 A. I don't recall that phone call.

13 Q. Are you saying it didn't happen or are you just saying
14 this is one of the many events in the timeframe?

15 A. No, I don't recall.

16 THE COURT: He doesn't recall it.

17 A. I don't recall.

18 THE COURT: Doesn't remember.

19 Q. But you are saying that the negotiating committee, the
20 members of the negotiating committee, of the TWA MEC, that
21 you all met or talked every day?

22 A. We talked all the time.

23 Q. You were asked some questions about the scope waiver
24 issue. Do you have J 168 handy, this is the letter of March
25 5, 2001.

1 A. Hold on a second.

2 THE COURT: 168.

3 Q. J 168, March 5, 2001.

4 A. Yes, I do.

5 Q. And you testified that paragraph 1, the first numbered
6 paragraph, can we pull that up, that first numbered
7 paragraph. You testified that the MEC communicated in this
8 paragraph that it would insist on seniority arbitration. Do
9 you recall that?

10 A. Who insisted on that?

11 Q. You indicated that the MEC negotiating committee
12 insisted in its communications with TWA that it would not
13 waive scope and would insist on seniority integration. I am
14 sorry. Seniority arbitration?

15 A. That is what we were pressing.

16 Q. That is your testimony about what was being conveyed in
17 this letter, yes?

18 A. Yes.

19 Q. Seniority arbitration. Can you show us in paragraph 1
20 where there is any reference to arbitration.

21 A. Our process agreement that we came up with and what we
22 had talked about was process agreement that would end in
23 arbitration and that is what was conveyed, the process
24 agreement and probably why now, I was asked why it is in
25 parentheses, because the process agreement, there is an

1 explanation as to what it entailed.

2 Q. You meant in quotation marks?

3 A. Quotation marks, excuse me.

4 Q. Is there any discuss or explanation in here that process
5 agreement means arbitration?

6 A. We would have had that in our notes.

7 Q. Right. About you in the letter, the formal proposal
8 that went to TWA, is there anything in this letter that you
9 are aware of that refers to arbitration?

10 A. Not in this letter. They knew what we wanted. They
11 countered with something totally different.

12 Q. Let's turn to D 359. Which is in evidence. This is the
13 ALPA comprehensive proposal, March 15, 2001?

14 THE COURT: What is the number again?

15 MR. FRAM: D 359.

16 Q. Do you have that?

17 A. Yes, I do.

18 Q. Paragraph A, a process agreement assuring a fair and
19 equitable seniority integration executed by all of the above.
20 Do you agree there is no reference in there to arbitration?

21 A. In this paragraph it does not say that.

22 Q. It doesn't say it in any of the documents that were sent
23 by the negotiating committee, TWA, after March 1 of 2001,
24 correct?

25 A. The process agreement that we communicated to TWA was

1 that it would end in arbitration. The process agreement idea
2 was ALPA's contract administrator, Mr. David Holtzman, and he
3 said you do not waive scope and successorship without a
4 process agreement that ends in arbitration.

5 Q. But is there some document you can point us to which
6 explains what process agreement means, and which explains
7 that process agreement includes, or ends with seniority
8 arbitration?

9 A. I would have been able to if I had access to my notes
10 that were taken from us.

11 Q. So you do think that such a document exists?

12 A. Yes.

13 Q. Can you tell us what date it is?

14 A. No, I can't.

15 Q. The March 31 transition agreement that was emailed to
16 Mr. Holtzman, do you remember the email conveying to
17 document?

18 A. The two-page document?

19 Q. Yes, sir. One of the documents attached to that was the
20 transition agreement that was ultimately signed, the one that
21 was signed by Mr. Kiel and by Mr. Pastore. Do you recall
22 that?

23 A. Yes.

24 Q. I am handing you P-139 in evidence. You may have it.
25 You got it handy?

1 A. Yes.

2 Q. Okay. Can you find it for me real quick?

3 Q. Take this copy. Move it along. You testified about
4 attending the meeting on April 2, yes?

5 A. That's correct.

6 Q. Did you also attend a meeting on April 1 of 2001 in St.
7 Louis?

8 A. I flew in and I had dinner.

9 Q. Are you aware that there was a meeting on April 1, that
10 afternoon of the members of the MEC and of advisors?

11 A. I don't know any of the MEC members that showed at the
12 meeting. I came in from Los Angeles. I knew that there had
13 been an email sent out that they would like to have a
14 gathering on April 1, prior to the April 2nd MEC meeting. I
15 didn't get in town in time.

16 Q. All right. So you knew that a meeting was scheduled on
17 Sunda ay, April 1, at one o'clock p.m. to talk about issues
18 and prepare for the formal MEC meeting the next day?

19 A. That's correct.

20 Q. You are saying that you didn't attend that meeting?

21 A. No. I couldn't make it in in time.

22 Q. What time did you arrive in town on the first?

23 A. It was late in the afternoon, maybe early evening. I
24 came in and had dinner with a couple members of the MEC.

25 Q. Who do you recall having dinner with?

1 A. The only person I remember was Sally Young and Bob
2 Pastore.

3 Q. Turn to your deposition transcript, please, page 171.
4 Line 12. You were asked about Mr. Wilder.

5 "QUESTION. What did Mr. Wilder -- what did Roland
6 Wilder say on April 2.

7 "ANSWER: Roland did not want us to waive our
8 scope.

9 "QUESTION. What did he say?

10 "ANSWER: I don't remember what he said. I know he
11 was against it.

12 "QUESTION: Are you sure he was there on April 2?

13 "ANSWER: I don't remember exactly who was there on
14 April 2. Actually, no. Roland, I don't know if he was there
15 or not. He was there with us on April 1."

16 Did I read that correctly?

17 A. That's correct.

18 Q. So were you there for the meeting on the first?

19 A. I had dinner.

20 Q. It were were you not?

21 A. It was dinner. This is ten years ago. When I went into
22 this deposition, like I said, I went in with a week's notice
23 if I could do this, trying remember dates. I remembered what
24 was said a lot of time, comments, I don't remember when I
25 said, who said what, when I couldn't, you know tell you what

1 a person said because I don't know who said it. Also the
2 dates at that time. I mean now I know what the dates are
3 because I have looked at the documents and I can refresh my
4 memory.

5 When I went into the deposition I was cold.
6 Literally, after ten years I walked in cold and I was trying
7 to answer the question.

8 Q. So are you saying you didn't take any time to prepare
9 before you gave your sworn deposition testimony?

10 A. I spent two hours the day prior with Mr. Press the first
11 time I met him.

12 Q. So let's opinion this down. Was your testimony during
13 your deposition April 28, about meeting with Mr. Wilder on
14 the first, was that accurate or was it inaccurate?

15 A. Roland may have been at the dinner. I honestly don't
16 remember if he was or not. I remember two people sitting at
17 the table with us, and that is what I remember.

18 Q. Well, take it a step at a time. The deposition
19 testimony, to the extent you told us that you were at a
20 meeting on the first, where Roland Wilder was present?

21 A. That would have been the dinner meeting.

22 Q. You think it was a dinner meeting?

23 A. Yes, it was. I was flying. I was coming in from Los
24 Angeles.

25 Q. Are you now remembering when you had dinner that evening

1 that there were three people present?

2 A. No, I am not saying that. I am saying there if there
3 was a meeting on the first that would have been a dinner
4 meeting and if Roland was there, he was there. There
5 probably were more than three people there. I don't
6 remember.

7 Q. All right. Do you have a recollection of being told
8 before the meeting on April 2 that Mr. Wilder couldn't be
9 there on second because he had a conflicting business
10 engagement?

11 A. Roland was there on the second.

12 Q. You are confident that Roland was there on the second?

13 A. Yes, I am.

14 Q. Okay. Do you recall Roland saying at the end of the
15 debate on the 2nd, that after hearing what everybody else had
16 to say, that he agreed that the MEC should vote to accept the
17 collective bargaining agreement that was on the table?

18 A. No.

19 Q. And as part of that you would agree to waive scope?

20 A. No. Roland was the one adviser who always stood firm
21 and told us not to waive scope. When Roland left the meeting
22 -- Roland was a dissenting view among advisors. Roland was
23 being treated poorly by the others in that room, the other
24 advisors. Roland left. I remember this because his bag,
25 garment bag, was behind me. He grabbed his garment bag, he

1 is walking out the door. He stopped. My characterization of
2 Roland's face was he looked defeated. He looked very upset.
3 And he turned around and he said, "I guess some contract is
4 better than no contract."

5 And as he turned, he said, if you are going to
6 waive scope, you don't have to do it now. You can do it on
7 the courthouse steps.

8 Q. This was on April 2, a Sunday -- I am sorry. This was
9 on April 2, a Monday, of 2001, correct?

10 A. That's correct.

11 Q. Now, the March 31 transition agreement, P-131, this
12 thick document that we talked about before, the one signed by
13 Mr. Kiel and Mr. Pastore, that document was discussed on
14 April 2, do you recall that?

15 A. It was in a resolution that was passed by the MEC for
16 the negotiating committee to go out, tie up loose ends, with
17 the transition agreement, and have it become for Mr. Pastore
18 to sign, Bob Pastore, on April 5.

19 Q. So the direction of the MEC was for people to spend more
20 time on the transition agreement, and to negotiate the best
21 possible wrap ups they could and then sign it?

22 A. That was the direction of the MEC.

23 Q. That was the resolution that passed, yes?

24 A. That's correct.

25 Q. And when you cast the 90 votes that you were entitled to

1 cast all 90 of them in favor of that, correct?

2 A. No, the resolution was not a vote of my constituent
3 votes. The resolution just passes with a voice vote, of MEC
4 members, you put your hand up. That was a totally separate
5 issue.

6 Q. Let's refer to D 74, please?

7 THE COURT: Is that new?

8 MR. FRAM: No, it is in evidence, your Honor.

9 Q. Do you recognize D 74 as the official minutes of the TWA
10 MEC meeting of April 2, 2001. Do you recognize those
11 minutes, sir?

12 A. Yes.

13 Q. Is that one of the documents that you did review to
14 prepare for your testimony here today?

15 A. I actually also have this document at home in my
16 personal possession.

17 Q. Okay. Well, regardless of where you have it, did you
18 review it to prepare for today?

19 A. Yes, I did.

20 Q. Can you turn, please, to the bottom of page 5 where it
21 references resolution oh 164?

22 A. Yes, sir.

23 Q. By Rautenberg and Lewin?

24 A. Yes.

25 Q. Lewin was the other pilot representative from your

1 counsel.

2 A. He was the captain representative for Council 4, that's
3 correct.

4 Q. And after we get beyond the whereas clauses, if we turn
5 to the next page you have therefore, be it resolved, I guess
6 you have actually five paragraphs with resolved. Do you see
7 those?

8 A. Yes.

9 Q. You said before this came to a voice vote?

10 A. No. The voice vote is over the, go forward with the
11 agreement to get the negotiating committee to finish the
12 transition agreement. The actual vote here on the numbers,
13 there was, when it came down to the scope waiver, there was a
14 aroll call vote requested to record the votes.

15 Q. Mr. Altman, let's make sure we understand. Describe for
16 us, please what a voice vote is?

17 A. Well, a voice vote, if we are sitting in the room and we
18 go around the room and you put your hands up. This, when you
19 want to -- memorialize is a good word -- what the vote was
20 for the future, you ask for a roll call vote. That is what
21 this was. This roll call vote was for the scope waiver. The
22 transition agreement would not come into effect, there would
23 be no transition agreement if there was no scope waiver.
24 That was just a, I don't want to say a byproduct, that is not
25 the word I am looking for, but that was the result of your

1 scope waivers, that you would waive your scope and
2 successorship, you would then have this transition agreement.

3 If we didn't waive scope and successorship you
4 wouldn't have that agreement because it was going to go to a
5 different avenue, different venue, it would go to the
6 bankruptcy court. This vote was for the scope waiver.

7 Q. Let's take them one at a time. The first therefore
8 clause decked directed the negotiating committee to seek
9 clarification immediately on all outstanding issues arising
10 from the proposed agreement covering the operations of TWA
11 LLC, and to finalist the LLC CBA, correct?

12 A. That's correct.

13 Q. That would be the collective bargaining agreement that?

14 THE COURT: 139.

15 Q. The transition agreement, correct?

16 A. That's correct.

17 Q. So part of the vote that follows is, that is the first
18 resolution or part, first part of the resolution that got
19 voted on by a roll call vote. Correct?

20 A. I would like to point out that you are forgetting the
21 beginning part of the resolution. I think that that should
22 be read by everybody as well.

23 Q. Why do you think that? What do you think the beginning
24 part, how do you think that in any way addresses the issue of
25 whether there was a roll call vote on what I just read?

1 A. I know what the vote was about. It was about the scope
2 waiver.

3 Q. But Mr. Altman, show us in the minutes where there is
4 any indication that there was a voice vote as opposed to --

5 A. There were no minutes taken. It was an executive
6 session.

7 Q. Okay. Let me finish the whole question if I could,
8 please.

9 Can you show us anywhere in these official minutes
10 where there is an indication that the resolution I just read
11 was subject to a voice vote as opposed to a roll call vote?

12 A. No. Doesn't say that.

13 Q. And then the second part, the second part of the
14 resolution is that the bankruptcy lawyers are directed to
15 take steps that would ensure that the LLC CBA is incorporated
16 into court documents resolving the section Section 1113
17 motion. Do you see that?

18 A. Yes.

19 Q. That was part of the roll call vote?

20 A. That's correct.

21 Q. Then you have got the three other aspects of the
22 resolution. Do you agree that all five of those aspects of
23 the resolution were part of what was the roll call vote?

24 A. Again, I do agree with that, in -- with the caveat. The
25 transition agreement, or conclusion here, was based on the

1 fact that you were going to waive your scope or
2 successorship. There was no transition agreement without
3 that. This was just, finish it up. We are waiving our scope
4 and successorship. Go out there and finish up that document
5 and get it back to the master chairman to sign. That is what
6 this vote was about. When you waived your scope you were
7 going to get this transition agreement. At that point, to
8 our knowledge, had not been completed because we had not seen
9 the document.

10 Q. And it is your testimony, sir, that a draft of the
11 transition agreement, marked as P-139, was not discussed and
12 was not available on April 2 of 2001?

13 A. I did not see it, no.

14 Q. Did you say before that Mr. Wilder had a -- Mr. Wilder
15 disagreed with the other advisors?

16 A. Yes, he did.

17 Q. What was Mr. Wilder recommending on April 2 that the MEC
18 do?

19 A. Roland's strategies were always litigation type
20 strategies. One of the strategies he had, we had filed a
21 grievance on the asset purchase agreement saying we had to
22 waive our scope -- the company could not put into a deal with
23 another company what we have to waive and not waive in our
24 contract. That is outside their authority. The idea was we
25 would file a scope grievance, that to hear that argument, and

1 then the idea was that Roland wanted to hold up the sale of
2 American, TWA, until that scope grievance was heard.

3 In other words, it was a delay tactic. And the
4 delay tactic would put pressure on American, you would hope,
5 speculation, that they would put pressure on the APA, their
6 pilot union, to get something done and not hold up the deal
7 because everybody had been talking about how they wanted to
8 get the deal done quickly. May 30 I believe was the date
9 they were trying to finalize it.

10 Q. What lawsuit, what type of lawsuit did he want to file,
11 do you recall?

12 A. I don't recall exactly what he called the lawsuit.
13 There was a number of different lawsuits, if he was directed
14 to seek authority to file, and he had no answer from ALPA
15 National on whether he could do it or not.

16 Q. As of April 2, was he recommending one lawsuit or
17 potentially different lawsuits?

18 A. He had the one lawsuit based on the, I forget what he
19 called the term, but it was to hear, wait until the scope
20 grievance was heard, in other words, you are going to delay
21 the sale until that grievance is heard and decided on. And I
22 forget what he called it.

23 Q. All Writs Act.

24 THE COURT: W r i t s.

25 Q. Do you recall he wanted to go to court and enjoin or

1 stop the American purchase of TWA's assets from going ahead?

2 A. That's correct.

3 Q. You thought that was a good thing?

4 A. Yes, I did.

5 Q. You weren't concerned at all about ham walking away from
6 the deal?

7 A. No.

8 Q. Explain for us, please, why if the American people were
9 communicating that they were going to walk away from the
10 deal, you thought they were bluffing, you didn't believe
11 that.

12 A. We didn't hear that from the American people.

13 MR. PRESS: I object. There is no foundation for
14 that question.

15 THE COURT: Foundation for what?

16 MR. PRESS: As to American said anything about
17 walking from the deal.

18 MR. FRAM: I will lay the foundation.

19 THE COURT: Well, he said --

20 MR. FRAM: I thought he said it before.

21 THE COURT: Lay a foundation.

22 Q. Mr. Altman, was it communicated back to you that if the
23 deal did not move forward, or if the Section 1113 motion was
24 denied, that American would walk away from the deal and not
25 purchase the assets of TWA?

1 A. The comments came from Terry Hayes. They never came
2 from American Airlines people to us. So I don't know where
3 the comment or why he said it. I can't speculate on that.

4 Q. Didn't you --

5 THE COURT: Terry Hayes who I had.

6 A. Terry Hayes said it. He is what?

7 THE COURT: He was the labor director of TWA, Inc..

8 A. That's correct. Labor director, correct.

9 Q. Didn't you tell us this morning that Mr. Hayes and the
10 other TWA people at that point were basically working for
11 American?

12 A. No, they were working, they were working for American.
13 I don't know what they were saying to him. I am not going to
14 speculate. Terry Hayes is a TWA person. He said something.
15 I didn't hear it from an American person so I didn't take it
16 for much.

17 Q. Did Terry Hayes communicate that Jeff Brundage, who was
18 the vice president for labor affairs for American, was saying
19 that American would walk away from the deal?

20 A. Actually, I think he did say that. But again, I don't
21 know if he is making that up. It is coming through a third
22 party. I am not going to speculate on that.

23 Q. All right. But regardless of whether it came directly
24 or not, when you hear that American were you hearing that
25 American might walk away from the deal?

1 A. We heard that quite a bit. It didn't bother us. It is
2 not something that --

3 THE COURT: When you say us. It bothered somebody.

4 A. Well, most of us on the MEC, what was, if you look at
5 the time, all the public announcements that were being made,
6 it contradicted, so when you see a contradiction you stop and
7 you go wait a minute. On this hand they are saying this. On
8 this hand they are saying this. The truth might be some
9 place in the middle. We weren't going to react to either
10 side.

11 Q. All right. So is it true that some people on the MEC,
12 some of your colleagues on the TWA MEC, were concerned about
13 that, and were concerned that American was serious and would
14 walk away from the deal?

15 A. I am not going to speculate on what other people
16 thought.

17 Q. I am not asking you to speculate. I am asking you to
18 recall if you can what the other members of the MEC said when
19 these issues were discussed at all the meetings that we have
20 been talking about?

21 A. Well, what is not speculation was originally the MEC was
22 unanimous in not waiving scope. In the end, there were a
23 couple of members that switched pretty quickly, said we have
24 to do it. But again I am not going to speculate as to what
25 was going through their mind. Initially as a group, we were

1 unified. I don't know what might cause someone to change
2 their mind. That is not, I am not going to go into that.

3 THE COURT: That is a pretty massive change,
4 though.

5 THE WITNESS: It was.

6 THE COURT: If it was all one way way and the final
7 vote had only one dissent.

8 Q. Do you understand I am asking not about what was in
9 people's minds. I am asking about what they said in meetings
10 you attended. Are you with me?

11 A. Okay.

12 Q. Do you recall what other members of the MEC, people like
13 Steve Rautenberg, and Dave Singer, Sally Young, do you recall
14 what they said in terms of their concern that American might
15 walk away from the deal. If you don't recall, say you don't
16 recall?

17 A. I don't recall about their walking away.

18 Q. But in any event, when you, Alan Altman, heard what was
19 being communicated about Americans position you weren't
20 worried about them walking away. Right?

21 A. That's correct.

22 Q. Do you have any background, any legal training?

23 A. No, I don't.

24 Q. Did you at the time have any training in mergers or
25 acquisitions or corporate transactions?

1 A. No, I did not.

2 Q. Did you consider yourself an expert on Americans
3 business or its, or its business plans?

4 A. Not by any means, no.

5 Q. Did you think that you were any better qualified than
6 the other members of the MEC to make judgments about whether
7 American was bluffing?

8 A. Oh, no, no. We made the decision based on whether they
9 were bluffing based on the fact that we are hearing
10 contradictory statement. It was just, let's wait and see
11 what is going on. You are not going to just react because
12 you hear something. That was part of the idea was take your
13 time, try to figure out and learn as much as you can.

14 Just because someone says they are going to walk,
15 you immediately throw in the towel and go screaming running
16 out the door, no, you don't. That is the opinion. That is
17 what the opinion was, we can take our time. We did have one
18 of our advisors, Mr. Roland Wilder, who from day one said you
19 don't need to, don't waive your scope.

20 They are not going to walk away is the other thing
21 he said. You are getting conflicting information. You have
22 to take your time and gather information. That is it.

23 Q. Once you gather the information, what basis did you have
24 for making the judgment that American was bluffing, that they
25 were not likely to walk away?

1 A. Never came to that. We had a meeting on April 2 where.

2 Q. Opinions changed and I made a decision based on what I
3 was told at that meeting, and what my responsibilities were.
4 We never had to decide if American was going to talk what a
5 way or not. That wasn't the issue?

6 Q. Weren't advisors telling the members of the MEC during
7 the period leading up to April 2 that there was a danger
8 American would walk away?

9 A. That was said by some advisors.

10 Q. Okay. And that was said consistently by the advisors
11 during the weeks leading up April 2, correct?

12 A. Not consistently. And consistently, I can say the only,
13 its only actual qualified person probably in that room was
14 Roland Wilder. Roland Wilder was the only one with who had
15 dealt with mergers before and had done a merger between
16 airlines, and he said that is not going to happen. So there
17 was conflicting information. There was no reason to rush to
18 judgment, just take our time, and see what we have, collect
19 as much information as we as we can.

20 Q. And the information got collected and people made
21 judgments on April 2, 2001, about what to do?

22 A. The judgment was information given to us was not about
23 American walking away, that was something totally different.

24 THE COURT: About the 1113.

25 A. Yes, it was going to succeed and you would lose your

1 representation in the contract.

2 THE COURT: You would lose more than if you waive
3 scope.

4 THE WITNESS: That's correct.

5 Q. Are you saying the issue of whether American would walk
6 away was not a factor that you considered on April 2, 2001?

7 A. No. No. That is not the, the issue is not whether they
8 were going to walk away. That is not what we were talking
9 about.

10 You can, in labor negotiations, threats and bluffs
11 are common. That wasn't the point. The point was that we
12 had conflicting evidence coming from advisors. Some were
13 saying on April 2 you waived your scope and successorship.
14 One is saying don't do it. I am not making a decision on
15 anything because someone says they are going to walk away
16 from the deal.

17 Q. Well, did all advisors on April 2 ultimately agree that
18 the Section 1113 motion was likely to be granted?

19 A. That is what they told us. I don't know why they
20 changed their mind. Not all did. Roland Wilder did not
21 agree to that.

22 Q. D 15.

23 THE COURT: What are I looking for?

24 MR. FRAM: D 15.

25 Q. Do you recognize that as an email report that Robert

1 Pastoare, the master chairman of the MEC, circulated to all
2 of the TWA pilots on April 3, the day after the vote we have
3 been discussing?

4 A. I haven't seen this email in ten years, whatever it is.
5 But it is coming from the MEC office, yes.

6 Q. It is coming from Robert Pastore who was at the meeting
7 and who was authorized to speak on behalf of the MEC?

8 A. I can't speak on this letter. I haven't seen this in
9 ten years. I don't even know what is in it.

10 Q. Well, let's see if I can refresh your memory about a
11 specific issue.

12 Can you did turn to the second page of the
13 document. See the paragraph beginning the alternative facing
14 our MEC was to fight the 1113 motion in court?

15 A. Yes.

16 Q. It says not one of our advisors believed that we would
17 be successful against the 1113. The Court thus far has sided
18 with TWA and American on virtually every important issue. If
19 we -- does that refresh your memory that all advisors,
20 including Mr. Wilder, agreed that the Section 1113 motion was
21 likely to be granted?

22 A. No. Roland did not, like I said, when Roland walked out
23 of the room, he was upset and he just turned around and I
24 don't consider this agreeing, as he is walking out the door,
25 he says I guess some contract is better than no contract. I

1 can, you know, I remember Roland being abused, actually,
2 quite heavily by the other advisors when he spoke out
3 differently. It was not, it was not a pleasant sight to see.
4 It was, it had gotten nasty and I was surprised. I hadn't
5 seen this before. But Roland made that comment walking out
6 the door and I will say as a defeated person, because he had
7 that look on his face and he was upset and there is no doubt
8 about that.

9 Q. Do you recall Mr. Wilder being abused at the meeting on
10 April 2 of 2001?

11 A. Yes, I do.

12 Q. Describe for us what you mean by being abused?

13 A. Voices were raised. Actually, we were all being yelled
14 at. This was not professional.

15 Q. Well, let's go back?

16 A. That is the point. You asked what happened. They were
17 yelling.

18 Q. I am asking you for facts. Not for your
19 characterizations, your interpretations. Let's start with
20 the facts and go from there if you could.

21 Can you tell us, please, what you recall people
22 saying to Mr. Wilder which led you to make the comment about
23 him being abused?

24 A. Yeah. Every time Roland would try to speak and try to
25 bring up his point, members, Michael Glanzer was one in

1 particular who started to yell at Roland. Raised his voice,
2 and it was loud. And you are wrong. You are wrong, you
3 don't know what you are talking about.

4 I was being yelled at. I didn't, you know, I had
5 advisors. Advisors are there not to yell at me and say that
6 if you don't, and fingers were being pointed, if you don't
7 waive your scope, they are going to do this. Okay. Back off
8 a minute. That is what was going on. So it was heated, and
9 it was nasty.

10 Q. Okay. So other than recalling that Michael Glanzer said
11 to Mr. Wilder, you are wrong, do you recall, take him first,
12 do you recall him explaining or stating why he felt Mr.
13 Wilder was wrong?

14 A. We were never given any explanation as to why they
15 changed their minds. And came about with a different
16 viewpoint on this meeting. So nobody said anything about
17 alternatives, why we are saying that, why you are wrong, why
18 this is going to happen.

19 Q. So he said you are wrong but never explained it?

20 A. That's correct.

21 Q. That is your testimony?

22 A. That's correct.

23 Q. Did any of the members of the MEC ask him, Michael, can
24 you please explain why you are saying Roland is wrong?

25 A. I don't remember anybody asking. It was, and this is

1 from my point of view. It was not a comfortable situation.

2 Q. I am asking you for facts. You understand that.

3 A. The facts are it wasn't a comfortable situation.

4 Advisors should not be yelling at us. That is a fact. That

5 is extremely unprofessional. And that is unfortunately what

6 happened was it became a very unprofessional environment.

7 And tensions were high, nerves were high.

8 Q. Sir, do you understand that I am asking you for the

9 facts which are leading you to conclude or say that it was

10 unprofessional?

11 A. It is unprofessional. Yelling is unprofessional.

12 Q. Do you understand I am asking you to give us some of

13 the details so that we can assess your conclusion in that

14 regard?

15 A. Well, like I said, what Michael Glanzer said was you are

16 wrong and he was yelling at Roland. What I am being told

17 that I am going to be the cause of all the pilots losing

18 their jobs, because they will lose their contract, their

19 union representation, they will be at will employees, and it

20 wasn't said in a polite manner. It was --

21 Q. It was -- I am sorry. You were speaking. Go ahead.

22 A. It was done with voices raised. And I was

23 uncomfortable.

24 Q. All right. So did anybody other than Mr. Glanzer yell

25 at or raise his or her voice to Mr. Wilder?

1 A. Clay Warner did.

2 Q. Tell us if you recall what Clay Warner said, if not the
3 specific words, the gist of it?

4 A. I don't remember the specific words. I don't. It was
5 just, again, it just stood out because Clay did turn around
6 to Roland, again it was along the lines of you are wrong, you
7 are not right about this. This is what is going to happen.
8 But there was no explanation as to why. Why was this going
9 to happen.

10 Q. Did he say what he felt Mr. Wilder was wrong about?

11 A. No, he didn't.

12 Q. Did anybody ask him?

13 A. I don't remember. I honestly don't remember if somebody
14 did.

15 Q. Other than Mr. Glanzer and Mr. Wilder, did anybody else
16 do your recollection yell at Mr. Wilder during the meeting on
17 April 2 of 2001, with respect to any issues?

18 A. I am not going to say an individual name. Everybody was
19 -- voices were raised. I am not going to attribute it to any
20 one person.

21 Q. If you don't recall, just say you don't recall?

22 A. I don't recall.

23 Q. You are telling us some of advisors also yelled at the
24 members of the MEC?

25 A. Yes, they did.

1 Q. In who do you recall yelling at the members of the MEC?

2 A. Clay Warner.

3 Q. And what do you recall Mr. Warner yelling about or
4 saying?

5 A. It was the comment I made earlier, that I am going to be
6 the cause, if you don't do this, this is what is going to
7 happen. It was very uncomfortable. Why are you raising your
8 voice to me and telling me in this manner. If there is a
9 real issue here, if there is something that you know, well,
10 you sit down, you say guys, this is what we found out. This
11 is what you need to do and this is why you need to do it, and
12 you do it in just calm manner.

13 Q. Because if you don't do this. If you don't do what?

14 A. Waive your scope. Everything related to that if we
15 didn't waive our scope and successorship and we went forward
16 with the 1113 motion, that it was, you were going to lose
17 your contract, your union representation, you were going to
18 be at will employees. You were going to lose your grievance
19 ability. You were going to have, and the comment was made
20 and I don't remember who said the comment, but it was so if
21 you call in sick you can lose your job. I don't remember
22 which person said it but that was said. My ears perked up
23 because, wait a minute, people get sick. What do you mean
24 you are going to lose your job. It is something that that
25 made you stop.

1 Q. Did you go into the meetings on April 2 intending to
2 vote against the collective bargaining agreement that had
3 been negotiated with TWA LLC?

4 A. I wasn't voting on the electric collective bargaining
5 agreement. I was voting on a scope waiver. The collective
6 bargaining agreement was a result that if we did waive our
7 scope and successorship, that we would get this new
8 collective bargaining agreement going into this new entity,
9 TWA, LLC. If you didn't waive your scope and successorship,
10 there was not going to be a collective bargaining agreement
11 until the issue was resolved through the courts, whichever
12 way that might have gone.

13 Q. Wasn't the way it was presented that we will give you
14 this anew collective bargaining agreement if you agree to
15 waive scope?

16 A. Yeah, you waive your scope and successorship, you will
17 get this. It wasn't the other way around where you are
18 voting on a collective bargaining agreement. We were voting
19 on a scope waiver. If we did this, we would get this new
20 contract.

21 Q. So you agree it was a package deal, you give up scope
22 and get a new collective bargaining agreement?

23 A. Yeah. Oh, yes.

24 Q. So --

25 THE COURT: With TWA LLC.

1 THE WITNESS: That's correct. TWA LLC.

2 Q. So what advisors were saying, with the exception of Mr.
3 Wilder, as you recall it, is take the package deal. Yes?

4 A. No. They didn't, they weren't saying take the package
5 deal. The only comment that I came was that you have to
6 waive your scope and successorship. If you don't the courts
7 will take your contract, your union representation, your
8 right to grieve, to be, you will be at will employees. The
9 train has left the station.

10 I still haven't figured out what legal term that is
11 and why that was mentioned to us.

12 THE COURT: It is the Railway Labor Act.

13 A. So it was not a package deal. We were voting to, the
14 issue a at hand that was in the asset purchase agreement was,
15 you have to waive your scope and successorship and if you
16 don't, this is what, this is the next step of action would be
17 the 1113, or if you do, you will get a collective bargaining
18 agreement with TWA LLC.

19 Q. Let's wrap this up with one last document you talked
20 about before, exhibit 365. It is the minutes, the notice and
21 the minutes?

22 THE COURT: I am sorry. 365.

23 Q. D 365?

24 A. What is the date on that.

25 Q. March 30, 2001?

1 Q. Turn to the second page of the document. These were
2 minutes prepared of the council meeting, March 30, 2001?

3 A. That's correct.

4 Q. I see three quarters of the way down it says
5 representative Allen Altman who acts as vice chair of Council
6 4 as well as vice chairman of the negotiating committee gave
7 extensive background and update on the current status of
8 negotiations with the company regarding the CBA. What do you
9 recall telling the pilots about the status of negotiations, I
10 assume with TWA, about a collective bargaining agreement?

11 A. I don't remember specifically. I know I went in there.
12 I know that I had spoken with Roland beforehand and I had
13 gotten a set of talking points. I didn't want to go in on my
14 own and say something that could have been improper. I don't
15 remember what it was that we actually discussed. I don't
16 recall going into real detail. I didn't think, we weren't
17 able to because they were ongoing negotiations and usually,
18 you would not go into, you know, a lot of detail in something
19 that was ongoing and open.

20 Q. Well, it does say, well, read the next sentence, it says
21 you also spoke on the significance of the upcoming Section
22 1113 motion to be heard a week from today in the bankruptcy
23 court. Do you see that?

24 A. Yes. I used Bill Wilder, it was Roland and Bill that
25 were helping us. I used his comments about the 1113. I

1 explained what the 1113 was because the guys didn't know. It
2 was something new. I gave an explanation as per our merger
3 counsel what was involved and what it entailed.

4 Q. It says you took many questions from and provided
5 answers to the members present. What did you tell them about
6 the likelihood that the Section 1113 motion would be granted
7 a week from the date of of this meeting?

8 A. I wouldn't have said anything that would have been my
9 opinion. I would have given what our counsel was advising
10 us. We would have gone open the talking points. I don't
11 remember what that was. Also many questions. We also had
12 other business going on at the time. So it would not, I can
13 say with quite certainty that the questions would not have
14 only been about what was going on here. It was still an
15 airline. We were still flying.

16 Q. Do you recall anything that you said to the pilots about
17 the upcoming Section 1113 motion?

18 A. I don't recall what I said to them at that time.

19 Q. Bob Pastore was also present at the meeting?

20 A. Yes, he he was. He lived out in LA.

21 Q. It says he gave his perspective and insight into the
22 current negotiations underway with both TWA and AMR and APA.
23 AMR refers to American Airlines?

24 A. Yes. The parent corporation.

25 Q. It says he took, he then took many questions from and

1 provided answers to the members present. What did he say
2 about the negotiations that were underway?

3 A. I don't remember. This was a council meeting, 30
4 members present. I don't know what Bob would have handled.
5 I don't know what the questions would have been.

6 Q. Top of the next page. Says pursuant to the
7 aforementioned presentation, a motion was offered by K Bounds
8 directing members of the LEC to ensure our continued
9 representation by ALPA after the closing date of the TWA
10 slash AMR deal. Furthermore, the LEC was directed to secure
11 the TWA/ALPA CBA throughout the life of TWA airlines, LLC.

12 Do you see that?

13 A. Yes, sir, I do.

14 Q. So the contract that your negotiating committee had been
15 negotiating was the collective bargaining agreement with TWA
16 LLC?

17 A. That's right.

18 Q. That is the contract you had described to the members of
19 Council 4 when you spoke earlier in the meeting?

20 A. It would have been the new contract, that's correct.

21 Q. And the vote here was directing you to secure that
22 contract. Yes?

23 A. Not that contract.

24 THE COURT: A contract.

25 THE WITNESS: A contract. That is it. A contract.

1 They wanted a contract and they wanted representation, which
2 we all did. We all wanted representation.

3 Q. It says you were directed to secure the TWA ALPA CBA
4 throughout the life of TWA Airlines?

5 A. Actually that is a mistake. Because the TWA ALPA CBA
6 would not be applicable to a new entity, TWA Airlines, LLC.

7 That contract, even the way this is written, it is
8 not written properly. We were negotiating a, it was
9 basically a new agreement into the LLC.

10 Q. Mr. Altman, you described prior to earlier in the
11 meeting, you talked to them about the contract that you had
12 been helping negotiate. Correct?

13 A. Yes. A new contract.

14 Q. And you told the pilots in Council 4 that the TWA MEC
15 would be meeting on April 2 to make some decisions, including
16 the decision about whether to accept the contract that you
17 had been helping to negotiate. Yes?

18 A. No, that is not correct. The decision, again, was not,
19 we are not voting on the contract. We are voting on the
20 scope waiver. You got the contract, if you voted to waive
21 your scope and successorship. You didn't get the contract if
22 you don't vote to waive scope and successorship.

23 Q. Mr. Altman, the contract that TWA LLC was offering was
24 one, that was an offer that they said would only remain open
25 until the beginning of the Section 1113 hearing on April 6 of

1 2001. Correct?

2 A. That's correct.

3 Q. Does that help you remember that the MEC was going to
4 decide at this meeting scheduled on April 2 whether to accept
5 that contract?

6 A. No. You just made my argument that I have been saying
7 all along, is that they were --

8 THE COURT: You are not here to make argument. You
9 are here to give testimony. He will make the arguments. She
10 will make the argument and he will make the arguments, and he
11 will make the arguments. You don't make arguments. You just
12 say, you tell it like it is.

13 Q. Just the facts.

14 A. The facts were that the testimony, what the facts are is
15 that you waived your scope and successorship you get the
16 contract. So what that offer was, is that you have until the
17 1113 motion, or it sounds like a lot like what Roland said,
18 you can wait until the courthouse steps before you waive your
19 scope to do this. You have this, this is in place. You
20 waive your scope, this offer of this contract is still
21 available until the motion starts. You would get that
22 contract if you waive. If you didn't, all bets were off. I
23 don't know what would have happened in the 1113.

24 Q. Did you walk out of that meeting of Council 4 on March
25 30, 2001, with an understanding of whether you would vote on

1 April 2 to waive scope or not waive scope?

2 A. I was still not going to waive scope.

3 Q. Okay. But in fact when you vote on April 2 you cast all
4 90 of your votes to waive scope along with accept goes the
5 collective were gaining agreement, correct?

6 A. I voted to waive scope at that meeting, yes, I did.

7 Q. So are you telling us that two days after this meeting,
8 three days after this meeting on March 30, that you did
9 exactly the opposite of what the Council 4 pilots had told
10 you to do?

11 A. My job was to protect their jobs. When I --

12 Q. Can you answer my question?

13 A. I am answering the question. When I was faced with
14 being told by advisors who I trusted that I would lose, or we
15 would lose our union representation, our contract, and become
16 at will employees, I had to protect their jobs. I voted to
17 waive scope, we got the contract. That is what we did.

18 Q. My question is, is it your testimony that when you voted
19 on April 2 to waive scope, that your vote was directly
20 contrary to what you say you were told by the council for
21 pilots to do at the meeting we have been discussing on March
22 30, 2001?

23 A. It wasn't contrary to what they told us to do. You even
24 read the line here where it says, secure a contract, well, at
25 this point when we are told that you are going to lose your

1 job, or you can keep your jobs, keep the contract, keep your
2 union representation, that is what we voted to do, based on
3 the information that was being told to us by our advisors.

4 Q. So did you do, did you vote on April 2 in a way that was
5 consistent with the direction you got on March 30?

6 A. I voted in the direction that was consistent with what
7 the job of the MEC is to do and that is to protect jobs.

8 Q. My question is a little bit different, sir. My question
9 is did you vote on April 2 in a way that was consistent with
10 the direction you got from the Council 4 pilots on March 30.
11 Yes or no?

12 A. No. The question is that on March 30, pilots do not
13 know at that time what was said to us on April 2. Everything
14 changed at that point. There is a difference. There is a
15 different --

16 THE COURT: You are saying that they had a
17 different set of information, so you didn't rely on their
18 instructions because you got new information?

19 THE WITNESS: Right. There was new information.

20 THE COURT: You were contrary to what they told
21 you, but based on your your new information.

22 A. Yes, that is what I was trying to say.

23 MR. FRAM: Thank you, your Honor. I have nothing
24 further.

25 THE COURT: Okay.

1 MR. PRESS: I don't have any questions.

2 THE COURT: Oh, no redirect. Captain, you are
3 excused.

4 Ladies and gentlemen, we are going home for the
5 day. I am not. They are not. But you are. Have a safe
6 trip home, have a safe trip in -- Oh, no, not until Monday.
7 I am not going to see you tomorrow. So sad. Well, see you
8 Monday morning at 8:30. Have a wonderful weekend. Hope the
9 weather is good. Don't discuss the case among yourselves.
10 Do not discuss the case with family, friends and loved ones.

11 (Juries leaves the courtroom)

12 THE COURT: We are going to break now.

13 Be back here at 3:30. We have a motion first.

14

15 (Recess)

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1 MR. FRAM: Your Honor, we had a chance to confer
2 about the Wilder designation. And we narrowed that to a
3 single --

4 THE COURT: Wilder.

5 MR. JACOBSEN: There is only one issue left on
6 that, your Honor.

7 MR. FRAM: You may want to take it with you,
8 whatever you want to do.

9 (Off the record discussion).

10 THE COURT: All right. I am not going to repeat my
11 reaction to what I said this morning. I am going to turn it
12 over to whoever is going to handle it from -- well, I told
13 you that I found at least initially. A lot of the
14 objections. I told you what it was.

15 MR. JACOBSON: I understood your initial views, your
16 Honor, and that is what I am here to address.

17 THE COURT: Now I am turning it back over to the
18 plaintiff.

19 MR. JACOBSON: Thank you.

20 THE COURT: To make whatever argument you want.

21 MR. JACOBSON: Thank you, your Honor. In your
22 statements this morning you suggested that you thought that
23 the testimony of Ms. Cooper lacked foundation, was
24 speculative, didn't show how she would have the ability to
25 make these statements, that there are were certain comments,

1 particularly to the mention of a trophy deal, trophy contract
2 that you thought were gratuitously in there. The first thing
3 I would note is is you had concern about whether there was
4 cross examination. In fact, this was a notice deposition,
5 defendant were there.

6 They cross examined, and they had a full
7 opportunity to examine her, examine all those items. And of
8 course that cross examination can be played by them in their
9 part of the case. Ms. Cooper, as, I know you didn't have a
10 huge amount of time to look at it, she is in addition to
11 being a flight attendant, she is a lawyer.

12 THE COURT: I said that. She practiced, she had
13 her own offers at one point.

14 MR. JACOBSON: And represents a lot of people in the
15 aviation industry.

16 THE COURT: Still does?

17 MR. JACOBSON: She he yes.

18 THE COURT: She is not a stewardess now. Right now
19 she is only a lawyer. Today.

20 MR. JACOBSON: I don't know. I don't know.

21 THE COURT: She said she never flew for anybody
22 other than TWA.

23 MR. JACOBSON: Okay.

24 THE COURT: That is what she said. She was on the
25 board of directors.

1 THE COURT: If that is the case, then presumably
2 she is not flying.

3 MR. JACOBSON: She was on the board of directors,
4 elected by the board of directors by the IAM which is the
5 union representing.

6 THE COURT: Are you sure? I thought she was on the
7 board before IAM took over representation.

8 MR. JACOBSON: At the time of the transaction she
9 was on the board, as one of three elected IAM
10 representatives. She may have been on there earlier under
11 their independent flight attendants union but at the point
12 of the deals coming to the table, IAM represented essentially
13 all of the unionized employees of TWA other than the pilots.
14 They went the flight attendants, mechanics, ground crews,
15 customer service people and the rest of that, and that union
16 through its concessions obtained in the prior bankruptcies
17 was single largest shareholder of TWA, Inc. So they were
18 owner of a company with a strong proprietary interest in
19 having the company --

20 THE COURT: They represented two groups, the flight
21 attendants and they also represented ground personnel.

22 MR. JACOBSON: Yes, and the ground personnel were
23 divided understood a whole number of groups, including
24 customer service and skilled mechanics.

25 THE COURT: TWA had 20,000 employees.

1 MR. JACOBSON: 22,000.

2 THE COURT: 22,000. And only two, only 2,300 of
3 them or something like that were pilots. And the.

4 MR. JACOBSON: Correct.

5 THE COURT: Most of the I assume were represented
6 by IAM. Correct?

7 MR. JACOBSON: Yes.

8 THE COURT: I assume that.

9 MR. JACOBSON: She was on the board. She was not
10 simply just a board member. She was part of the executive
11 committee of the board. She took the leave, per her
12 testimony, in attempting to put together the stand-alone
13 deal. She is not talking about just things that were told to
14 her. The board of directors are the people who manage and
15 run the company at the highest level. They select the
16 officers and they decide things like mergers, et cetera. Her
17 testimony described in detail the work that she and her union
18 were doing to put together a stand alone future for TWA.
19 Including negotiations with Boeing in which she obtained
20 commitments to the large amount of lease concessions by
21 Boeing.

22 THE COURT: Well, hold it. Boeing, I mean, I heard
23 testimony about Boeing comes under the fact that Boeing was
24 mad as hell at her, not at her, but there was nothing firm
25 about, there is nothing concrete about what Boeing was

1 willing to do or on what terms they were willing to do it.

2 MR. JACOBSON: She could put the deal together and
3 get the concessions from the union that Boeing was interested
4 in doing the deal knowing is done until the paperwork is
5 signed.

6 THE COURT: What about needing investors?

7 MR. JACOBSON: They had venture capitalists who were
8 interested in investing --

9 THE COURT: Interested in investing in an airline
10 is not the same as saying you have the person signed up.

11 MR. JACOBSON: There are steps to go to a signed
12 deal. They were willing to put money in the Kansas City
13 facility in order to negotiate, TWA would be doing mechanic
14 service work for other airlines. The meeting of April 9 at
15 which the American airline presentation was brought by Mr.
16 Conklin was the meeting at which was prepared the stand-alone
17 --

18 THE COURT: Stand alone for how long?

19 MR. JACOBSON: Indefinitely. Their testimony
20 was --

21 THE COURT: She could testify that they could stand
22 alone indefinitely.

23 MR. JACOBSON: Yes, your Honor. Her testimony was
24 that in 2001, there budget showed they already getting, they
25 had a profit of I believe, 45 million dollars in* anticipated

1 in 2001.

2 THE COURT: Was TWA on the calendar year.

3 MR. JACOBSON: I don't know.

4 THE COURT: Is there a financial statement any
5 where that shows they they made 45 million dollars.

6 MR. JACOBSON: That was the company's.

7 THE COURT: What did they make in the previous
8 year?

9 MR. JACOBSON: They had a loss in the prior year.

10 THE COURT: In 2000. Is it a calendar year?
11 Fiscal year? What kind of year?

12 MR. JACOBSON: I don't know, your Honor. I don't
13 have the answer to that.

14 THE COURT: Well, the prior year, whatever it was,
15 whether it was a calendar year of 2000 or a fiscal year that
16 ended before December 31, 2000. There was a loss. How much
17 was that loss?

18 MR. JACOBSON: I believe it was 30 million. Is that
19 correct?

20 MR. FRAM: No.

21 THE COURT: What was the loss the previous year,
22 what was the loss the year before that?

23 MR. PRESS: Mr. Fram give figures in his opening.

24 MR. FRAM: We already an opinion from Judge Walsh in
25 the bankruptcy where he made specific findings about loss

1 from year to year. Mr. Katz is handing a copy of.

2 THE COURT: About do we have, we don't know.

3 MR. KATZ: On page 2.

4 MR. JACOBSON: On page 23 of her deposition
5 testimony, she indicates that at the end of --

6 THE COURT: Page 23?

7 MR. JACOBSON: Yes. 23.

8 THE COURT: This was given to me with unnumbered
9 pages.

10 MR. JACOBSON: Look a long the left side of it,
11 number column.

12 THE COURT: 23, what line?

13 MR. JACOBSON: 23, approximately line 9 which is
14 describing the company's projected financials, projected by
15 management.

16 THE COURT: What was their actual performance? In
17 2001?

18 MR. JACOBSON: She wasn't asked in her deposition
19 that. She was asked these questions. And she said that she
20 had --

21 THE COURT: What meaning does this probably have?
22 You also have the labor concessions would have to have been
23 voted on by the membership. She said that.

24 MR. JACOBSON: Yes.

25 THE COURT: She didn't even have that. She then

1 talks about GE Capital and ILFC, whoever they are.

2 So we are looking at probably, if you take the
3 odds, venture capital list, we are looking at, then she goes
4 on. We don't know what they are going to give. Then Soros
5 comes out of nowhere and he is showing interest. Instead he
6 goes to Jet Blue or something like that. So he is gone.
7 Look, whether a company can stay -- I tried a case
8 representing Ernst and Young, you heard of them?

9 MR. JACOBSON: Yes.

10 THE COURT: The case I tried was, they issued a
11 reported for a company, that filed bankruptcy eleven months
12 after, into the new year, after the report. There is an
13 accounting outstanding that says that, you get a clean
14 letter, you get a clean opinion with an audit. You are in
15 effect representing that the company with the ordinary use of
16 credit and anticipated income can operate for a year. That
17 is implicit.

18 So this company filed in eleven months. And a
19 large investor of the company sued Ernst and Young for
20 failure to limit their letter, you know, with an appropriate
21 -- it was a jury, and you would be surprised to know I won.
22 Even though it chose to file bankruptcy they could have
23 lasted a year, without bankruptcy, because they made the
24 decision to file..

25 When you say a stand-alone company, for how long?

1 Any accountant will tell you, any prediction after twelve
2 months as to how long a company, particularly in a volatile
3 industry like this, can stand as a stand-alone company, they
4 would, that is why they, that is why I think the accounting
5 statements only have, it is good for a year. You are
6 representing it for twelve months.

7 MR. JACOBSON: Your Honor, as you just said, no one
8 can know what the future is. But this is a woman who is on
9 the board of directors, she is not only on the board of
10 directors, she is on the executive committee of the board.
11 She has been on the board for years. She is the
12 representative of the largest shareholders --

13 THE COURT: It is her belief and she is not, she
14 has no expertise in accounting, there is a whole industry out
15 there of people who value companies to determine whether they
16 can be stand-alones or not. I guess some management
17 consultants do it. My brother-in-law does it. He is
18 supporting my sister. And valuing companies as to what their
19 future projections are. She doesn't have any experience.

20 MR. JACOBSON: Your Honor, there will be evidence in
21 this trial that a majority of the board of directors of TWA
22 were prepared on April 9 of 2001 to vote out -- January 9, I
23 am sorry. So much talk about April.

24 THE COURT: When they did the deal with American.

25 MR. JACOBSON: On that day that deal was presented

1 to them they were prepared going into that meeting prior to
2 that meeting starting, prior to Mr. Compton talking about
3 that, to remove him as CEO, bring in J Alex. The unions were
4 confident that they would bring --

5 THE COURT: You want to somehow or other dirty up
6 the TWA CEO, to what end? What does that prove? The issue
7 in this case --

8 MR. JACOBSON: No.

9 THE COURT: The issue, even if they could exist as
10 a stand-alone company which I don't think you have even come
11 close to proving, so what? You can sell a company just
12 because --

13 MR. JACOBSON: Your Honor, that is not the issue.

14 THE COURT: That's right, it is not the issue in
15 the case.

16 MR. JACOBSON: The issue was as I understood you
17 asking it did they have any alternatives to going to American
18 Airline at that time, where the alternative simply American
19 Airline or liquidation and the board of directors, the
20 majority of the board of directors of the company, the people
21 who were responsible for running the company, who represent
22 the owners of the company.

23 THE COURT: They are not here. TWA is not a
24 defendant. Compton is not a defendant. It is the union, the
25 argument is that the union, because they wanted to solicit

1 the American pilots to become part of, once again, the ALPA
2 family, basically didn't give, breached its duty of fair
3 representation in negotiating for the deal. Even if they
4 could have existed as a stand-alone company. That is only a
5 guess at best, even with a passel of experts testifying to
6 that, it is still only a guess as to whether they could or
7 not.

8 MR. JACOBSON: The evidence that the defendants will
9 put on is that all advisors agreed, all the wise men agreed
10 that this is a company that had only two options, go into the
11 arms of American or liquidate. They are telling --

12 THE COURT: The answer is, where do you get that?

13 MR. FRAM: Judge, that is in one of Judge Walsh's,
14 opinions.

15 THE COURT: Judge Walsh may have said that.

16 MR. JACOBSON: That was in their opening statement.
17 That their choice was to go into the American deal, that they
18 pressed the heart, they tried to see whether American was
19 bluffing about walking away, that the only option at every
20 term..

21 THE COURT: Why don't you go higher an expert, have
22 the expert pour over all this data, put an expert on to say
23 clearly this is a company that could have survived. I am not
24 saying that that is necessarily the testimony, I am saying
25 this person, who, I guess you, she clearly wants to help the

1 pilots, and she gives is sort of vague testimony, we have
2 some here, some there, venture capitalist out, there Boeing
3 is going to give. Yeah.

4 That is hardly proof this is a bunch of guess
5 work by what is really a very, in the case I told you I
6 tried, I heard two experts. On the issue of whether the
7 company could stand alone. Both were very good, by the way.
8 The jury happened to pick the one I worked for. Both experts
9 were quite able. They decided to leave, that is classic
10 expert testimony. Can a business stand alone and how far can
11 you project that they will be able to stand alone.

12 Particularly in a very volatile industry, a twelve-month
13 window, a 24 month window, what is it that you can predict.
14 And in is nothing in any of his testimony, she gives number,
15 50 million here, 20 million there, 70 million here, but I
16 have no idea what TWA needed. Maybe they needed 600 million.

17 MR. JACOBSON: Your Honor, in you you note in her
18 testimony on page 23, we had a projection at that time, the
19 company's projection was that for 2001 they are scheduled to
20 have operating profit of 87 million dollars --

21 THE COURT: Where is that.

22 MR. JACOBSON: Page 23, beginning line 9, going
23 through line 19 where she says.

24 THE COURT: She says we were scheduled.

25 MR. JACOBSON: We, the company.

1 THE COURT: To have an operating profit. Where
2 does that come from.

3 MR. JACOBSON: She says we are scheduled to have
4 that without any of these concessions, without the
5 give-aways. She is on the board of directors of the company.
6 She testifies earlier she gets regular reports from
7 management --

8 THE COURT: Who told her that? She didn't figure
9 it out.

10 MR. JACOBSEN: She gets reports from management as
11 to the financial status is. She hired independent
12 accountants to review that and advise her.

13 THE COURT: She talks about hiring accountants.
14 There is nothing in here that says what the independent
15 accountant said which would have been hearsay anyhow. But
16 just as I decide to create the image, we hired an accountant.
17 That is not proof of anything.

18 MR. JACOBSEN: Based on all the work that she and
19 the other directors did, the evidence will be that a majority
20 of the board of directors were preparing that day to move
21 forward with the stand-alone plan and the only reason they
22 didn't and bring in J. Alex as a new operating CEO through
23 Bettina white, and move her to an operations level.

24 THE COURT: Why is it evidential that it is the
25 opinion of some director that Mr. Compton was not a good

1 leader.

2 MR. JACOBSON: It is not a matter of whether he is a
3 good leader or not.

4 THE COURT: It has a good prejudicial value in your
5 case. But what is the real proof there?

6 MR. JACOBSON: Mr. Compton is not a defendant here.
7 We don't need to get prejudice against him.

8 THE COURT: You worked hard at it.

9 MR. JACOBSEN: We are talking about the fact that
10 there is a company that a majority of the board of directors
11 believed are going in a direction. He delivered an
12 alternative plan.

13 THE COURT: Did you read that testimony like giving
14 a gift to your girlfriend? That type of testimony is
15 designed to prejudice. It is specifically designed to
16 prejudice. It is nonprobative or minimally probative and
17 designed to prejudice.

18 MR. JACOBSON: So leave out that paragraph. The
19 rest of her testimony, your Honor, is from the member of the
20 board of directors with a lot of experience representing the
21 largest shareholder group of the company who described in
22 detail that the weeks and am many hours that they put in to
23 developing this would, meetings with the primary schedulers.

24 THE COURT: Just a minute, the Boeing deal was
25 approved by the board of directors, not the Boeing deal.

1 MR. JACOBSON: The American Airline deal.

2 THE COURT: Yes, right.

3 MR. JACOBSON: Yes.

4 THE COURT: They didn't have to agree with it.

5 They could have said no, we are going to be stand-alone.

6 They made that choice. You are telling me they all thought
7 this and went ahead and approved another deal.

8 MR. JACOBSON: They had a deal brought to them to
9 become part of --

10 THE COURT: They didn't have to accept it.

11 MR. JACOBSON: It was a very attractive deal to
12 become part of a merger partner who through acquisition of
13 sale with American Airlines.

14 THE COURT: If it was a very attractive deal, they
15 adopted it, what is all the other stuff about stand loan have
16 to do?

17 MR. JACOBSON: A large portion of defendant's case
18 is that the ALPA advisors were not betraying the duty to
19 their clients by saying the only option was go through with
20 it. We say there were other options.

21 THE COURT: This woman shared all her feelings with
22 the other advisors. How did the advisors know what was going
23 on before the board? I can't even figure out from her
24 testimony what was going on before the board. And I, how
25 would they know at that time investment banker. Who was that

1 guy?

2 MR. FRAM: Michael Glanzer, your Honor.

3 THE COURT: Glanzer. How would he know what she
4 thought? How do I know --

5 MR. JACOBSEN: That choice was a good one. Glanzer
6 is probably adviser who would be most informed about the
7 various options that TWA.

8 THE COURT: He would be most informed because, TWA
9 was a reporting company so they clearly had a fair amount of
10 public information about out about. Jake correct.

11 THE COURT: And a person in the field would have a
12 much better feel for that information.

13 MR. JACOBSON: He was the person who had been
14 employed by the TWA MEC to review the investment options and
15 the partnership options and the merger options available to
16 the company in order to advise the pilots as to which way to
17 go.

18 So he would be in fact a person intimately
19 involved. The other lawyers, the lawyers who hired, I agree
20 that they wouldn't necessarily know what was going on at the
21 board level of TWA.

22 But the union also had its own representative on
23 the board of directors, Bob Pastore, who is described, we
24 have heard about already, he is called ALPA on the property,
25 he is the representative of ALPA on the property he is a

1 member of the board of directors of ALPA. And he is a board
2 of director member of TWA. So ALPA has its own, a member of
3 its own board on the TWA board who has access to all this
4 information.

5 And the knowledge of an officer is in fact
6 attributed to the entity he is an officer of. Bob Pastore is
7 an officer or a director, excuse me, on the board of
8 directors of ALPA. The knowledge he has is imputed to ALPA
9 he was on the TWA ALPA -- the TWA board.

10 MR. KATZ: Nowhere in Ms. Cooper's deposition
11 testimony --

12 THE COURT: Let him finish. You will get your
13 chance.

14 MR. KATZ: All right.

15 THE COURT: Look at page 25, line 4, down to the
16 end of the page.

17 MR. JACOBSON: There --

18 THE COURT: Read it.

19 MR. JACOBSON: "Question --

20 THE COURT: NO, not out loud.

21 MR. JACOBSON: I am sorry.

22 THE COURT: I don't want to see your lips moving
23 when you are reading it to yourself either.

24 (Pause).

25 MR. JACOBSON: All right.

1 THE COURT: What does any of that prove?

2 MR. JACOBSON: Well, the pilots of TWA have
3 frequently given substantial financial concessions to the
4 company. That is historical fact. They have done it both in
5 connections with bankruptcies and other entities.

6 THE COURT: Indeed, in her testimony that one of
7 the people that, one of the people at, one of the employees
8 or one of the employees of the union said you have been
9 driving our wages down.

10 MR. JACOBSON: The Delta representative.

11 THE COURT: Delta guy said you have been driving
12 our wages down for years. Something like that.

13 MR. JACOBSON: Correct. TWA as part of the stand
14 alone plan was looking for an additional eight.

15 THE COURT: The whole thing about Bettina White and
16 J Alex. It says we agree J Alex would take his turn to
17 ensure the concessions, to ensure that the concessions were
18 accurate.

19 First of all, even if they did hire somebody to
20 tell them it was accurate, that would be hearsay of the worst
21 kind. But they didn't go that far, it is not clear anybody
22 told them they were accurate. All I know is they disappeared
23 from the scene.

24 MR. JACOBSON: What she says in connection with that
25 is that the airline wanted an eight percent concession from

1 the unions represented by the IAM, that they had put
2 together a package of concessions that they give to TWA to
3 price out and TWA priced it out at being at the dollar value
4 of --

5 THE COURT: Where does she say that?

6 MR. JACOBSON: That is earlier, your Honor.

7 (Pause)

8 THE COURT: She would, line 22, 14. Give or take,
9 we would make the presentation, we would cost it out, then
10 meet again and discuss other items.

11 MR. JACOBSON: There is a later spot where she says
12 they in fact cost it out but they wanted to be confident.
13 She this they made for concession goes. They said if in fact
14 the savings you experience do not meet the level required you
15 can first eliminate the extra week of vacation, one week of
16 vacation from all employees --

17 THE COURT: You consider that is the company.

18 MR. JACOBSON: She says what the value of that is.
19 We agreed to eliminate overtime.

20 THE COURT: This is a formula for a fight down the
21 road. What investor -- If you don't get enough savings we
22 will give you more.

23 MR. JACOBSON: They were going to contractually
24 commit to four items. One was giving up a week of vacation.
25 One was to allow certain maintenance services done on small

1 locations. To no longer have the employees do that, but to
2 hire outside contractors.

3 And one was to kick in dollars that were being paid
4 to their pension funds, as many dollars of those as needed to
5 close the gap between what is required and what was actually
6 delivered. So at the end of the day they said we will give
7 up our hard dollar retirement money on a dollar for dollar
8 basis to close the gap with all the other concessions don't
9 apply to the savings you say you need from us.

10 That is a pretty strong set of provisions that the
11 IAM was willing to give. And there will be evidence I
12 believe in this case that the pilots were willing to make
13 their concessions and present to it a vote. Obviously, it is
14 not a done deal until all the paperwork is signed and
15 everything is in place. But you are at a point where the
16 board of directors were sufficiently comfortable with moving
17 forward with this, that they were going to remove Bill
18 Compton down to an operating level.

19 THE COURT: They were so confident that they,
20 within days, signed a new agreement with American.

21 MR. JACOBSON: You could have a good agreement, and
22 then last minute have something come up that is even better
23 or appears to be even better. That is what they have here.
24 They worked out something that required a lot of concessions
25 on the part of the employees, that required concessions on

1 the part of Boeing, which was a large creditor with a lease
2 holds.

3 It had no, there were a lot of moving parts. But
4 it was a, it appeared to the board to be a workable deal.
5 Then Mr. Compton delivered something that appeared to be
6 better, a deal where you didn't need concessions, the
7 employees had worse and everyone got pay raise.

8 THE COURT: You are asking that the stand-alone
9 would be wrong and eliminate the risk that there are too many
10 moving parts to the plan, two different unions, venture
11 capital, you had Boeing. You had a lot of moving parts.

12 MR. JACOBSON: Right. But the thing about it is not
13 that, that, that doesn't mean they felt stand alone wasn't a
14 likely thing to work, but the actual benefit to everybody
15 with the stand loan, the union members would have to given up
16 concessions.

17 THE COURT: Why can't you -- yeah, can't she come
18 to court? Why can't she come to court? St. Louis to Newark
19 is a three-hour flight or two and a half hour flight. Why
20 can't she come here, testify?

21 MS. RODRIGUEZ: She lives in Florida.

22 THE COURT: Or Florida.

23 MS. RODRIGUEZ: We don't control her.

24 THE COURT: She is so friendly to you.

25 MS. RODRIGUEZ: She is really not friendly.

1 MR. JACOBSON: No. She did despise Bob Pastore,
2 despises most of the pilots. She does not have a good
3 feeling toward them. We they were at loggerheads for years.
4 She is not a friend of pilots. We will reach out to her.
5 She is not a friend.

6 MS. RODRIGUEZ: She was subpoenaed to come to a
7 deposition. We took the deposition in Florida. She wasn't
8 happy to be there.

9 THE COURT: And Mr. Katz, did you cross examine in
10 this case.

11 MR. KATZ: At deposition I asked her a few
12 questions on cross examination. But I viewed most of this
13 testimony as total hearsay, speculation, no foundation. She
14 never says that she told these things to the pilots. She is
15 talking about what was going on with the flight attendants
16 union or the mechanics union, and there was no deal with the
17 mechanics to make concessions. There was no deal with the
18 flight attendants to make concessions.

19 Boeing hadn't put in any money and wasn't going to
20 put in any money. And the fact is that it is all so
21 speculative and irrelevant. It is irrelevant, your Honor,
22 because advisors were talking on April 1 and second. On
23 April 1 and 2nd, TWA, and its board, had entered into an
24 asset acquisition agreement.

25 THE COURT: In January they entered into that.

1 MR. KATZ: And during that period of time over 200
2 million in DIP financing had been put into the company.

3 THE COURT: By whom? American?

4 MR. KATZ: By American Airlines.

5 THE COURT: American did the DIP financing.

6 MR. KATZ: Yes. When advisors they weren't looking
7 at the situation as it existed in December. However
8 speculative Ms. Cooper's testimony is, things had evolved
9 from then and before any other alternative could come along,
10 they would have to pay off the DIP financing. But American.

11 THE COURT: I have, what really, is expert
12 testimony in the most vague, speculative way, could possibly
13 be, and then it is not clear that the people that you want to
14 nail, advisors, even knew any of this. I didn't know, it is
15 not clear to me.

16 MR. KATZ: Ms. Cooper never says she talked to
17 anybody about it.

18 THE COURT: That the adviser, it might have been
19 even improper for her as a board member. How do I get that,
20 whatever she had, into these people. This is not a case
21 where the jury is asked to decide whether the company could
22 stand as a stand-alone company or not or a stand alone
23 company for how long, for a year, which is the accounting
24 standard, accounting standard or longer. They are not asked
25 to do decide that. Even if they are, even if the company

1 could have lasted for ten years. That is not the issue. I
2 do agree that, you know, if --

3 MR. JACOBSON: Your Honor, may I interrupt. Mr.
4 Press reminded me that Mr. Holtzman who we heard a lot about
5 was involved on all the documentation.

6 THE COURT: But this is her opinion. Nobody
7 else's. She doesn't even say that the accountants agree with
8 her. She doesn't say that. She references that several
9 times that accountants be brought from but not that they
10 agreed with her conclusion. She doesn't say that.

11 MR. KATZ: Judge Irenas, would you indulge me for a
12 minute, in terms of responding to what Mr. Jacobson has just
13 been arguing here? I would like to refer you to D 288.

14 THE COURT: I am sorry. What is D 288.

15 MR. KATZ: A document I handed up to you.

16 THE COURT: Do I have it?

17 MR. KATZ: I handed it up to you about 20 minutes
18 ago.

19 THE COURT: Is it in evidence?

20 MR. JACOBSON: No.

21 MR. KATZ: It is a ruling by Judge Walsh, April 2,
22 1002. A bankruptcy court on a motion to stay with regard to
23 the sale --

24 THE COURT: How did Blank Roam get in this case?

25 MR. KATZ: I this they had a client. If you turn

1 to the second page, your Honor, in evaluating the stay order
2 on the left column at the bottom he gives the loss, the
3 operating losses for three years that Mr. Fram mentioned in
4 the opening statement. Towards the bottom of the page.
5 Number 3. Approximately 29 million in 1997, 65 million in
6 1998. And 340 --.

7 THE COURT: There is a mention of Rothschild.

8 MR. KATZ: Rothschild was their investment banker.
9 Then in paragraph 5, he talks about approaching all these
10 other airlines and having no success. Paragraph 6, there is
11 a self help plan and then in paragraph 8 he finds self help
12 plan amounted to a gap measure to get TWA to a strategic
13 transaction. It would have enabled TWA to avoid liquidation
14 over the winter of 2001 but no more. And then flipping to
15 the next page, your Honor, in number --

16 THE COURT: You want to prove that the Judge is
17 wrong. Right? Mr. Jake?

18 MR. JACOBSEN: We want to prove.

19 THE COURT: He paint a very clear picture here.

20 MR. JACOBSON: Yes, he does.

21 THE COURT: And you want to prove he is wrong.
22 Don't feel bad, judges are often wrong.

23 MR. KATZ: We would ask you to take judicial
24 notice.

25 THE COURT: Well, I wouldn't mind. I have to tell

1 you, I wouldn't mind as a matter of fact the fact that
2 evidence was offered contrary to what the bankruptcy Judge
3 would not per se buy in, if it was relevant to the issue
4 before me.

5 I don't know that I have to adopt every finding he
6 ever made.

7 But my problem still is, number one, here we talk
8 about, you know, it is not the largest, one of the oldest
9 investment bankers, Rothschild, which goes back to a
10 Rothschild representative, August -- He had different name.
11 Shernberger. But August Belmont (phonetic). His religion
12 changed, everything changed. He was the original Rothschild
13 representative in this case forty years ago. And so it is
14 very old and very respected banking firm, if not one, they
15 say TWA is in perilous financial condition, could not
16 continue to act as an airline. That is testimony, you have
17 testimony that came in an expert like that, I would
18 understand it. Even if you disagreed with Rothschild, I
19 would understand it. But.

20 But here I have an airline hostess, cum lawyer, who
21 is on the board. They are trying, and the Judge makes
22 reference to that. He says here, on TWA, talking about the
23 self help plan, outstanding later, a lesser concession, that,
24 Boeing to avert a delay or avert a crisis, alternative to a
25 liquidation, was not intended to create, TWA to emerge from

1 its financial crisis as a stand-alone viable entity. I just
2 have her here, just throwing little snippets out, 20 million
3 on this, eight million on this. I don't know how much they
4 needed, this is a company that had four billion dollars in
5 revenue.

6 MR. JACOBSON: Four and a half bill in revenue.

7 MR. KATZ: Judge Walsh finds on the next page they
8 needed 50 to 100 million dollars more to survive the winter
9 season. On paragraph 17 on the bottom of page 3. TWA's
10 approximate cash balance on January 10 was 20 to \$30 million,
11 and TWA needed 40 million dollars to fund its operation to
12 next day.

13 He finds in the paragraph before that, in the
14 absence of the American agreement TWA would have filed for
15 Chapter 11 relief days earlier than January 10, 2001. That
16 filing would have been a free fall Chapter 11 case with its
17 attendant outcome risks. So he does make findings about how
18 much TWA needed and how much it had.

19 MR. JACOBSON: Your Honor, I would invoke the old
20 expression about garbage in, garbage out. We had here at
21 this time.

22 THE COURT: Here?

23 MR. JACOBSON: At the time of the bankruptcy here

24 THE COURT: Before Judge Walsh.

25 MR. JACOBSON: Yes, before Judge Walsh, we had a

1 situation in which all the players on the TWA side, all the
2 players on the American Airlines side wanted this deal to go
3 in. It wasn't that a time for them to polish the apple, it
4 was a time for them to make the apple look as rotten as
5 possible and everybody who went in there to push to make sure
6 that American became the acquirer, they didn't want to be
7 involved with Icahn again and they wanted to work for the
8 biggest airline.

9 And who told them in the agreement they were all
10 going to get jobs at increased pay rates and while the
11 shareholders would be wiped out, everyone else would live
12 happily ever after. So sometimes bankruptcies are not the
13 most contested things in all directions.

14 THE COURT: I agree with that to some agree. I
15 don't see the union representative here.

16 MR. JACOBSON: They had a union representative vice
17 chairman come in and testify.

18 THE COURT: That is a lawyer. There is no lawyer.

19 MR. JACOBSON: No, the airline called in the vice
20 chairman of TWA MEC.

21 THE COURT: Even the federation, the general
22 federation of Jewish workers in Israel had a lawyer here.

23 MR. JACOBSON: Everyone has a lawyer in bankruptcy

24 THE COURT: Everybody didn't have a lawyer but the
25 union didn't appear to have one here that I can see. Even

1 the mysterious Karabu had a lawyer.

2 MR. KATZ: That is Carl Icahn.

3 THE COURT: I know it is Carl Icahn.

4 Go ahead.

5 MR. JACOBSON: As I said before, we refer to her as
6 being a flight attendant, semi-lawyer, but she is.

7 THE COURT: She is not a semi-lawyer. I will give
8 her a credit for being a regular lawyer.

9 MR. JACOBSON: But she is in fact, she was a member
10 of the board of directors of the executive committee of I
11 believe the audit committee.

12 We will have evidence, we will be tying it in that
13 a majority of the board of directors were confident enough in
14 the stand-alone plan to follow it but that this other things
15 American Airlines had offered would seem a whole bother at
16 that time.

17 THE COURT: The confidence in Mr. Compton, you are
18 talking out of both sides of your mouth. The fact it would
19 appear from your own evidence that was, Compton, that is the
20 name?

21 MR. JACOBSON: Yes.

22 THE COURT: It was Compton that put this together.

23 MR. JACOBSON: Yes, he did, the American Airline
24 deal.

25 THE COURT: The directors had enough confidence in

1 him to a proffer the deal, and approve it within days when
2 all of this was going on.

3 MR. JACOBSON: They had enough confidence in
4 American Airlines to approve the deal. After the deal is
5 done, Mr. Compton isn't running the show any more.

6 THE COURT: It is not just the deal with American.
7 It is what they are offering. What did they offer? 500
8 million or something?

9 MR. JACOBSON: Later increased to 740.

10 MR. PRESS: Mr. Case was incorrect about debt
11 assumption. There was debt assumption about two billion
12 dollars.

13 THE COURT: I looked at the contract. There was a
14 general disclaimer of debt assumption but there were
15 categories of debt they kept.

16 MR. PRESS: In the total value.

17 THE COURT: I couldn't figure out from the
18 agreement what it was. You are saying it it was two billion
19 dollars.

20 MR. PRESS: The total value of the deal exceeded
21 two billion dollars with the cash and the debt assumption.

22 THE COURT: Together.

23 MR. PRESS: Together.

24 THE COURT: I knew there was some debt assumption
25 but I couldn't, they described it in ways that I couldn't

1 monitize it when I was reading the agreement. The general
2 disclaimer of a certain debt but then there were special
3 categories of debt that they did assume.

4 MR. PRESS: Remember \$2.8 million fee? That was
5 based on one percent of the total value of the deal. That is
6 how you get to 2.8 million, so 2.8 billion.

7 THE COURT: Mr. Jacobson, tell me how even assuming
8 that we get over the speculation and hearsay and lack of
9 expertise problems, how do we get over the problems that
10 somehow or other the investors had access to her opinion?

11 MR. JACOBSON: Who?

12 THE COURT: That advisors.

13 MR. JACOBSON: Advisors.

14 THE COURT: Seven or eight advisors had access to
15 her opinion.

16 MR. JACOBSON: Mr. Seltzer had, I was involved in
17 the transaction. Mr. Holtzman was involved --

18 THE COURT: Mr. Seltzer was a bankruptcy lawyer.

19 MR. JACOBSON: I am sorry. Mr. Glanzer was involved
20 and Mr. --

21 THE COURT: How do we know? I assume they all had
22 access to public information. They could go on the computer
23 and get it, you know, get annual reports and SEC filings and
24 a bunch of other stuff.

25 MR. JACOBSON: Glanzer had access to more than

1 that. He was there as the ALPA, TWA MEC branch investment
2 advisors in connection with attempting to get merger
3 partners, other business combination people. He was getting
4 information that the union had, in addition, and Mr. Holtzman
5 was involved in --

6 THE COURT: This wasn't union information.

7 MR. JACOBSON: The union had a seat on the board and
8 they were involved with the company, in attempting to market.
9 They felt that any combination would likely require some type
10 of concession by labor so labor was involved in the process.

11 THE COURT: What about the long paragraph on page
12 24 about J Alex Associates. What does that do for the jury
13 besides confusion.

14 MR. JACOBSON: Besides confusion.

15 THE COURT: Besides confusion, what does the jury
16 learn from all of that? You didn't number the pages. I hate
17 unnumbered pages. I go, I start sweating when I get a
18 document, so I numbered them. I sat and numbered them one by
19 one.

20 MR. JACOBSON: We generated on the fly off the
21 electronic system that coordinates the individual notice in
22 order to get to the parts we had in there.

23 THE COURT: All right. I will accept that. You
24 were overwhelmed with technological gremlins.

25 MR. JACOBSON: And the rapid pace of trial. Fast

1 forward.

2 THE COURT: I push the trial at lightning speed.
3 Eight years.

4 MR. JACOBSON: I am talking about inside the
5 courtroom, your Honor.

6 MR. PRESS: It is nine. But who is counting? We
7 have only been in for five.

8 MR. JACOBSON: You are talking about from roughly --

9 THE COURT: Starting with 24, 1, looking at 23,
10 down to page 27. 27, 1. All the next page and two thirds of
11 the following page. What are you proving here? Isolate some
12 fact in here that helps the jury decide whether ALPA took a
13 dive.

14 My father-in-law almost took a dive. He was a
15 professional boxer in the old days. The guy who was supposed
16 to fight couldn't fight. The guy he was supposed to fight
17 was 40 pounds heavier. He got in the ring took a swing, my
18 father-in-law who was a tough guy went down on the canvass
19 and said I am stay here on the canvass and his manager threw
20 the towel in.

21 So I know about taking a dive. What does any of
22 this prove, whether ALPA took a dive?

23 MR. JACOBSON: Starting at page 26, 3, where he is
24 talking about providing financial information that J Alex had
25 full access to TWA books.

1 THE COURT: Let's assume they did, what does that
2 prove? Are you trying to squeeze an inference that Alex
3 agreed that there was stand alone, are you trying to squeeze
4 that inference that somehow or other J Alex or Bettina White
5 somehow or other agreed they would could be a stand-alone
6 company. Is that the inference you are trying to squeeze
7 out? Let's assume they did. Let's assume Alex had total
8 access to the TWA books and the plans of the union's and the
9 whole magilla. What does that prove? I am missing
10 something.

11 MR. JACOBSEN: I hear you comment on that.

12 THE COURT: I am talking all the way, I am talking
13 from, 23, 20, to 27, 1, page 27, line 1. Going down, start
14 with 27, 4, 27, 4, through 28, 19. What does that prove?
15 Anywhere in these four pages, is there something that proves
16 the disputed fact in this case?

17 MR. JACOBSON: Your Honor, we understand your
18 comments. What we should do is trim this down a little bit
19 further to deal with the sections you are concerned about.

20 THE COURT: I would like that. I think you know
21 where I am coming from.

22 MR. JACOBSON: I understand your comments. You made
23 them very clear.

24 THE COURT: There are two categories. The brought
25 conceptual category and the little things I consider to be

1 gratuitous and prejudice. I don't like those either.

2 Trophy, that.

3 MR. JACOBSON: The trophy thing is not gratuitous.

4 THE COURT: It might not be but coming from her at
5 this point, I don't know where she heard it. Did she hear it
6 from another TWA employee in which case it is definitely
7 hearsay.

8 It has all kinds of powerful prejudice, unfair
9 prejudicial potential. And I don't even know where it comes
10 from. As I say, TWA seems to have always had an inflated
11 view of itself. And this could have been just, American
12 would be, you know, and who at American, was it the
13 president? Everybody at American.

14 MR. JACOBSON: I believe it was supposed to have
15 come from the CEO.

16 THE COURT: She doesn't say that. There is a story
17 at Boeing about the girlfriend. What does that have to do?
18 Boeing's decision to, are we criticizing now, are we go to go
19 have testimony as to whether the decision to buy an Air Bus
20 or air buses, usually, plural, from the European maker is bad
21 management?

22 MR. JACOBSON: No. I know what the issue is.

23 THE COURT: There could be a strong argument it was
24 good management.

25 MR. JACOBSON: Boeing was a primary creditor of the

1 company because of the lease holds. They were negotiating
2 with Boeing. Boeing gave a cash concession to TWA to assist
3 it through winter months and then discovered that the money
4 had gone directly to their competitor so they were very
5 disenchanted with management at that time which was causing a
6 problem because part of the stand alone program was to
7 require reworking the leases, the lease rates were high.

8 THE COURT: Boeing was still doing a huge amount of
9 business with TWA. So if TWA buys a few planes from Air Bus,
10 so what? Boeing gets paid. Boeing can take it. Boeing is
11 angry, they are furious. I don't know. Who at Boeing is
12 furious? Who? Did somebody say? Did she talk about Boeing
13 people?

14 MR. JACOBSON: She and Bob Pastore attended a
15 meeting with Boeing representatives about a stand-alone plan
16 and that was one of the big issues raised by Boeing was the
17 fact that, hey, last time we gave you help you gave the money
18 to our competitor.

19 THE COURT: Boeing is trying to leverage its
20 position which is perfectly legitimate.

21 Well, work on it. Come back to me. I will keep
22 this. See what you can do. Right now I have a lot of
23 trouble --

24 MR. JACOBSON: I understand.

25 THE COURT: I think it is very tangential to your

1 theory of the case. I mean it is a theory which has kept
2 this case alive and the theory of why this case is here. It
3 is one of the reasons I didn't grant summary judgment,
4 because of your theory. That, not that I made my findings.
5 I thought there was a real legal issue as to whether ALPA
6 breached the duty of fair representation. I didn't think I
7 was trying a case on whether there could or could not have
8 been a stand-alone company and that question again has a
9 timeframe to it, stand alone for one year.

10 And I think if you went in to accounting standards,
11 I don't know whether it is, joint accounting principles, or
12 joint accounting standards, I am pretty sure, things may have
13 changed, but normally an accountant is only responsible for
14 certifying that for one year.

15 When they gave a key letter it was a certification
16 for one year they could be stand alone.

17 MR. JACOBSON: I had a case against Ernst and
18 Young.

19 THE COURT: Against them?

20 MR. JACOBSON: For a company and bank building
21 equipment. They had a clean letter and were gone six months
22 later.

23 THE COURT: Same issues?

24 MR. JACOBSON: No, the issue was the person who had
25 the fraud in the company was so high up that the Court

1 decided his manager was to refute the company. The
2 accounting firm was no guarantee of discovery of fraud so his
3 company was gone and --

4 THE COURT: Was Ernst and Young sued?

5 MR. JACOBSON: Yes.

6 THE COURT: Did they pay?

7 MR. JACOBSON: No. I lost and the Eighth Circuit
8 affirmed.

9 THE COURT: My Appellate Division affirmed. But
10 same issue.

11 MR. JACOBSEN: Similar, yes.

12 THE COURT: It is a similar issue, and an issue
13 that had some twist to it.

14 The level of knowledge is not particularly an
15 issue. Who to impute knowledge to.

16 MR. JACOBSON: Thank you very much for all your time
17 today. We are going to try to catch our plane and go home.

18 THE COURT: Get back to me.

19 MR. JACOBSON: We will get something to you as soon
20 as we can.

21 THE COURT: Send it. I am going to be here
22 tomorrow. I wasn't planning on it, but I will be here
23 tomorrow. But you won't.

24 MR. JACOBSON: We won't be here.

25 THE COURT: I will see you Monday. I hope my

1 driver won't be working too much overtime.

2 MR. JACOBSON: Thank you.

3 MR. KATZ: Thank you.

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5 (Adjourned at 4:45 p.m.)

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I N D E X.

THEODORE CASE, RESUMES.

REDIRECT EXAMINATION P. 11.

ALAN ALTMAN, SWORN.

DIRECT EXAMINATION P. 43.

CROSS EXAMINATION P. 128